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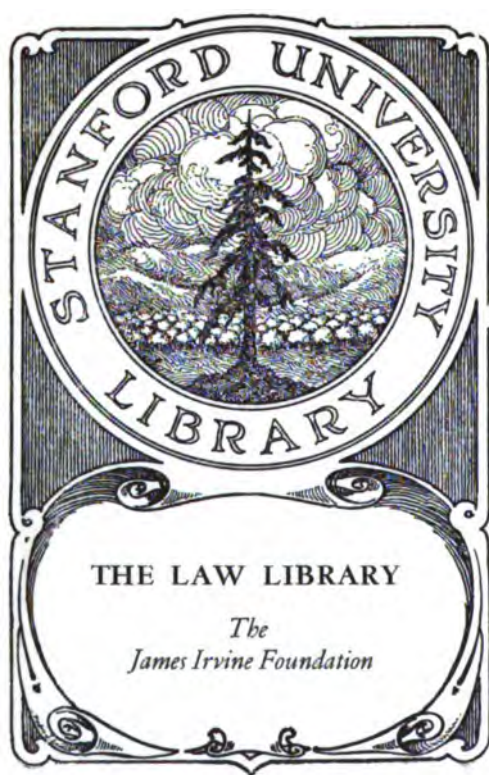
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"A Book of no authority a collection
of various precedents" - per Mr. King (17).

3 Mr. No. 281. salary and
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A COMPLETE
SYSTEM OF PLEADING:

COMPREHENDING THE MOST
APPROVED PRECEDENTS and FORMS of PRACTICE;

CHIEFLY CONSISTING OF
SUCH AS HAVE NEVER BEFORE BEEN PRINTED:

WITH AN
INDEX to the PRINCIPAL WORK,
INCORPORATING AND MAKING IT A CONTINUATION OF
TOWNSHEND's and CORNWALL's TABLES,
TO THE PRESENT TIME;

AS WELL AS AN
INDEX of REFERENCE to all the ANCIENT and
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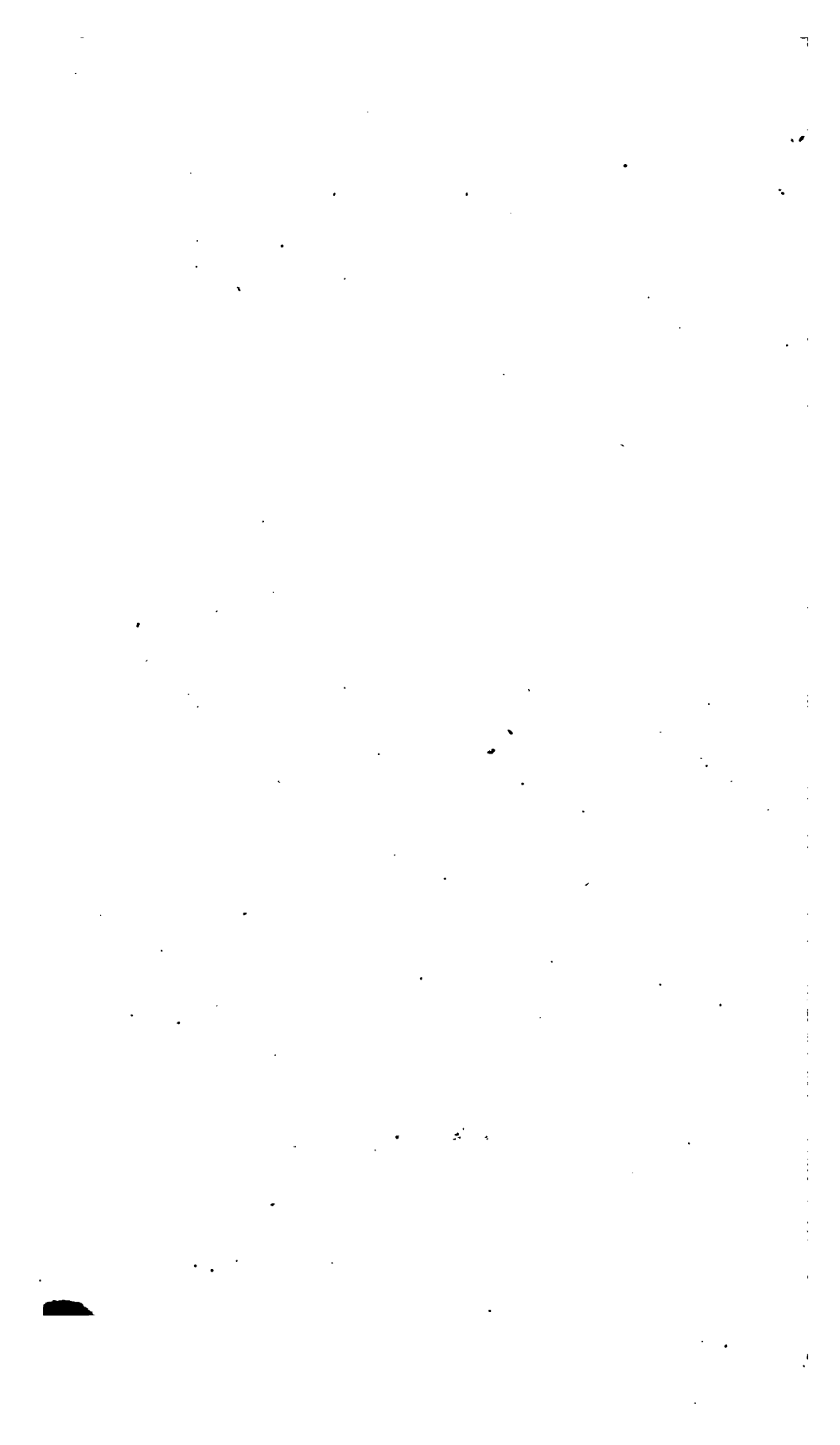
By JOHN WENTWORTH, Esq.
OF THE INNER TEMPLE, BARRISTER AT LAW.

*Ne quæ Studio dispôsta fideli
Intellecta priusquam sint contempta relinquant.* LUCRET.

V O L. I.
CONTAINING
ABATEMENT.—ACCOUNT.—ASSUMPSIT.

L O N D O N:
PRINTED FOR G. G. AND J. ROBINSON, PATERNOSTER-ROW;

1797.



TO THE

PROFESSION.

AFTER successive interruptions and disappointments for eighteen months, since this work was first announced, I am now able to present to the Profession the First Volume of my SYSTEM OF PLEADING in Octavo, which, pursuing my favourite plan, contains ABATEMENT, ACCOUNT, and part of ASSUMPSIT; together with the particular ANALYSIS of the Pleas in *Abatement* and of the Action of *Account*, as I intend at the end of every complete Head or Heads, when completed in each succeeding volume. These I name the HEADS, or LEADING TITLES; for the Heads of *Proceedings by and against Attornies*, &c. are subdivisions arising out of the General Heads.

THE next Head in the *plan*, namely, ANNUITY, may seem to be an exception; but this Head, by reference to the INDEX, will be observed to be postponed to the Pleadings under the Head *Writ of Annuity—Proceedings in*, in order to connect the old Proceedings, such as *Writ of Annuity*, *Writ of Right*, &c.: Yet ANNUITY will preserve its former place if it follows *Personal* and *Mixed* Actions, and immediately precede *Writs of Right*, &c. which are *Real* Actions, without injury to the ANALYSIS.

IN the Pleas of ABATEMENT, considering it a very important Plea, I have thought proper to give the utmost variety, notwithstanding I know there are

TO THE PROFESSION.

many in the Books ; I mean the *Ancient Entries* chiefly ; for I have not found so many in Books of Precedents of *later* date. And if the finished Pleader and experienced Professor should think the Forms too similar or multifarious, still, by narrowly inspecting them, differences will be discovered in *each* both useful and instructive to the unexperienced Practitioner. Keeping in view the practical use of my Work, I have promised and do mean to give the greatest possible variety of Precedents and Forms in Pleadings.

IN ACCOUNT I have given few Forms of Pleadings, necessarily from the disuse of this (though a most beneficial) Action : there are, however, more in the present volume than in any other Book extant, with complete references to all the *Modern* and *Ancient Entries*.

BUT on the more important Action of ASSUMPSIT, in every day's constant use, I have bestowed more pains at least than any other Gentleman in practice in the Profession has leisure to do. And I wish it to be considered, that without attending to the distinctions between *Assumpsit General* and *Special*, I have adopted a mode which I think the most *useful* ; that is, throughout this Action I have classed such as I think bear a relation to each other : for instance, in the Second Volume, in *Assumpsit—Special Contracts*, respecting *real* property, *by and against Landlord and Tenant*, I have taken care to give the Precedents immediately afterwards on *Contracts relating to Personal* property, namely, the *Sale, Assignment, Demise, &c. of Lands, Houses, &c.* because they have relation to each other ; and so in like manner on *Contracts relating to Sale, &c. Carriage and Conveyance of Goods, &c.* I have given those *against Carriers by Land and Water, &c.* &c. as they respect the doctrine of *Bailments, &c.* ; an
arrange-

TO THE PROFESSION.

arrangement which I have studiously adopted, that the Student and Pleader may with his eye immediately catch the *subject* and *form* together. In the alphabetical manner in which the majority of Pleaders arrange their Pleadings, I have seldom seen this analytical order relating to the *subject*.

THIS order, however, may not seem to be observed in the Division preceding, viz. *Assumpsit General*: but I have adopted what I cannot help thinking a more truly useful mode there. For instance, in *Actions by and against particular Persons*, the most general subdivision of that DIVISION on the right page of the sheet, I have constantly led the eye at the top to the subject-matter or *title* (if I may call it so) of the PRECEDENT.

THE reason why I have not critically distinguished the Precedents in *Indebitatus Assumpsit* from *Assumpsit Special*, is, because I do not think it so well defined or determined in the Books; but chiefly, because I think my method the most natural and easy for the Professor and the Student. I will give one instance: In my Work, under this Head, it is solemnly determined that ASSUMPSIT will not lie for a *legacy*, which if it did, would be *Indebitatus Assumpsit*; but *Assumpsit Special* will lie on the promise by the *Executor*; and yet the Precedents are in the same form. I have given two Forms with the leading Cases, and referred to the very able Arguments of Mr. Justice BULLER and my Lord KENYON. The Profession will best judge of the usefulness of them.

I HAVE, however, violated the method in one instance, namely, *Policies of Assurance*, which are *Contracts of Indemnity*, and would more naturally fall under that *subdivision*; but, never departing from *real* utility for a fastidi-

TO THE PROFESSION.

ous adherence to strictness of method, I have purposely classed *Bills of Exchange, Promissory Notes, and Policies of Assurance, relating to Trade*, together under *Assumpsit General*; and in one instance, for this reason only, have given one Precedent of a *Policy of Assurance against Fire*, though it is in *Covenant*, and ought to come under that Head; yet in the INDEX the same Precedent is to be found under its proper Head *Covenant—on Policies of Assurance*.

THERE are some Precedents that are not strictly reducible to any of those Heads which I have considered most useful as *subdivisions*, and where I have not been able to class the *considerations* of the *Contract*, from their anomalous and special nature. These I have thrown together under that sort of Head with the title at the top of the page as in *Assumpsit General: Ex. gr. on Charter Parties of Affreightment, &c.* whereas *Covenant or Debt* is the ordinary Action. These and other instances will present themselves to the Pleader readily.

NEXT follow the *Pleas, Replications, &c.* in ASSUMPSIT. The *subdivisions* arising out of this Head, namely, *Proceedings by and against Particular Persons*;—*Attornies, by and against*, in every species of Action;—*Baron and Feme*,—*Executors and Administrators, &c. &c.*;—Forms of *beginning and ending* every Declaration or Plea;—the *Judgment in Abatement*,—*Account*,—*Assumpsit*, and in every other Action; all follow in their proper place and natural order, either in the body of the Work, if they form a distinct Precedent, *however minute*, or in the INDEX. For example, for the *beginning and ending* of a Plea in ABATEMENT, (which indeed form the Plea itself), see FORMS. In like manner, for *beginnings and endings* of Declarations in ASSUMPSIT in every possible way, see *Beginnings and Endings of Declarations* under that Head.

These

These and other practical directions I may occasionally give, are to be observed throughout the Work.

THE common Declarations in *Indebitatus Assumpsit*, and the common Counts, are so familiar to every Attorney's Clerk, and so easy to be found in every book of practice, that I had contented myself with referring to them in the INDEX, as they are to be found dispersedly throughout ASSUMPSIT: however, after having put my Work to the press, at the instance of many of my younger friends in the Profession, I have given at the end of ASSUMPSIT one complete Form of *every common Declaration* on all the *common Counts*. And therefore here I cannot too frequently and too earnestly request the Student's attention to the INDEX. Here the difficulty which has been and will be previously regarded as to the facility of turning to Precedents and Forms in the body of the Work, vanishes. Here every Precedent and every Form is so distributed, first by the ANALYSIS, and then by the references FOLLOWING EACH separate Head, as to leave it impossible for a person of the plainest intellect not to find what he wants: All fall into their strictly natural place, and make this hitherto difficult doctrine of Pleading capable of an easy comprehension, as well as prepare the pupil to read his Law Books, especially in this branch of that science—to digest his reading, and improve his faculties.

I HAVE taken all the Books of Practice of Modern Times, with the Reporters, and have chronologically Indexed all the Forms and Precedents whenever they have occurred in them: These, with my own work, form the *Modern Part* of my INDEX. I have next taken the *Modern Entries*, with CORNWALL and TOWNSHEND's *Tables*, and thrown the antique mass into my own distribution: This forms the INDEX to the *Ancient Entries*.

WITH

WITH what fidelity and care I have executed this work of labor, I am in the judgement of my superiors in experience and learning. But when the vast compass of the design, the prodigious variety of matter comprehended in it, and above all the difficulty of illuminating such a system by a strictly methodical arrangement purely analytical—when all these things are contemplated, and they must be so to form an adequate opinion, I entertain a hope leaning to confidence, that the liberality of the Profession will find more reason to be pleased that so much has been done, than disappointed that the Work has not attained absolute perfection. Not to have sunk under so arduous an undertaking is, perhaps, no ordinary merit. I know likewise that it is the fate of Industry not to be too highly appreciated by Genius, which, while it soars above, “like the poet’s directing angel in the storm of battle, vindicates to itself the glory of success, regardless of the more humble but useful machinery by which, in part, its triumphs have been effected.” To lament that this species of ingratitude is common to all ages, and therefore seemingly making part of our nature, is to discover more passion than philosophy: Yet for myself I will add, (after appealing to, as well as hoping for, the approbation of the PROFESSION) that the sense of my having been unceasing in my endeavours, as it is the best title to the approbation of the PUBLIC, so it administers to me that solid gratification which alone is an ample reward for my professional assiduity.

J. WENTWORTH,

INNER TEMPLE, 5th JAN, 1797.

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HABEAS CORPUS.

**PARTLY PARTAKING OF A CIVIL AND
PARTLY OF A CRIMINAL NATURE.**

**MANDAMUS QUO WARRANTO
PROHIBITION.**

A B A T E M E N T.

AND the said defendant comes and (a) defends the wrong and injury, &c. and says, that he the said defendant is, and at the time of exhibiting the said bill of the said plaintiff, and long before, was one of the officers of his majesty's court of the Bench at Westminster, in the county of Middlesex, that is to say, *clerk of the errors* to Sir John Willes knight; and during all that time was, and is duly and personally attending the business of the said office in the same court of the Bench; and that by the usage and custom of that court of the Bench from time whereof the memory of man is not to the contrary, used and approved of in the same court, no officer of that court, whilst he attends his business in the same court, hath been drawn into plea and compelled against his will, nor at any time past hath been used or accustomed, nor ought to be drawn into plea or compelled against his will, to acknowledge any justices or ministers of the said lord the king, or any other secular judges whatsoever, but only before the justices of the lord the king of the Bench aforesaid, upon any pleas, plaints, or demands, which do not touch the person of our lord the king (pleas of freeholds, felonies, and appeals only excepted); and he the said defendant further saith, that he is drawn into plea in this court here, by the exhibiting the said bill against him as aforesaid, against his will, and against the custom aforesaid; and this, &c. and he brings into court here his writ of our said lord the king, issuing out of the said court of the Bench, and directed to the sheriff of Middlesex, the tenor of which said writ follows in these words, to wit, George the Second, &c. [go through the writ,] indorsed J. Willes; wherefore the said defendant doth not conceive that the said court of our said lord the king here, will or ought to have cognizance of the said plea against him, &c. Plea of privilege of defendant as clerk of the errors to the chief justice of the court of C. B. pleaded to an action in B. R.

R. DRAPER.

(a) *Qu. if half defence should not be made in such plea.* Gilb. C. P. 187. Co. Litt. 127.

AND (a) Charles Lewis Moreffault, against whom the said plaintiff by his bill exhibited complains by the name of Lewis Moreffault (b); by B. H. his attorney, comes and defends the wrong and injury, &c. and prays judgment of the bill aforesaid, because Plea of misnomer of the defendant in the christian and surname.

(a) 5. T. R. 487.

defence. Vide Bl. Com. 290.; but vide

(b) A plea of misnomer must be without.

contra Com. D.g. tit. Abatement, I. 16.

VOL. I.

b

he

A B A T E M E N T.

he says that (a) *he was baptized* by the name of Charles Lewis, to wit. at, &c. and that he is named and called by the name of C. L. Moresfaut, and by the said name from the time of his baptism hitherto hath been called and known; without this, that he the said Charles Lewis Moresfaut now is or ever was called or known by the name of Lewis Mossalt, as by the said bill is above supposed; and this, &c. (b) *wherefore* he prays judgment of the said bill, and that the same may be quashed, &c.

ELLIOT BISHOP.

(a) This averment seems proper, though the plea would have been good without it. (b) 3. T. R. B. R. 185. Hixon v. Binna.

Replication of *nelle prosequi* to the above plea. And thereupon the said plaintiff (who impleaded the above-named C. L. M. by the name of L. M.) says, that he cannot deny the exception aforesaid, made by the said C. L. M. to the said bill, but confesses the same to be true, and prays leave to exhibit a better bill against him, and it is granted to him, &c. Therefore it is considered that the said plaintiff should take nothing by his said bill so exhibited as aforesaid, but that the said bill may be quashed, and the said plaintiff shall be in mercy for his false claim thereof, and the said defendant shall go thereof without day, &c.

(b) Plea, misnomer of defendant's surname in the County Court.

In the County Court of the County of Cambridge. } AND thereupon William Frohock, against whom the said William Kidman hath levied his plaint by the name of William Frog, comes in his proper person and defends the wrong and injury, &c. and (a) *prays judgment of the said plaint, because he says,* that he is named and called by the name of William Frohock, and by the name of William Frohock hath always hitherto been called and known; without this, that he now is, or at the time of levying of the aforesaid plaint of the said plaintiff was, or ever before had been called or known by the name of William Frog, as in and by the said plaint is above supposed; and this he the said William Frohock is ready to verify; wherefore he prays judgment of the plaint aforesaid, and that the same may be quashed, &c.

(a) *Qu.* if this should not be omitted; as there is no objection to the plaint itself, but the matter disclosed in the plea is entirely extrinsic.

The above plea will answer the purpose of abating the suit, but will not

entitle the defendant to *costs*, as none of the statutes giving costs extend to this case: but the following *affidavit* is necessary to be annexed.

(b) 2. Str. 1218.

V. LAWES.

In the County Court of the County of Cambridge.

Between { WILLIAM KIDMAN, Plaintiff,
AND
WILLIAM FROG, Defendant.

William Frohock, of, &c. impleaded in this suit by the name of William Frog, maketh oath and saith, that the plea hereto annexed is true in substance and matter of fact (a).

(Sworn, &c.)

WM. FROHOCK.

(a) An affidavit of the truth of the plea must always be annexed. 4. & 5. Ann. c. 16 § 1.

AND

AND W. H. of London, merchant, against whom the said plaintiff hath obtained his original writ in this cause by the name of W. H. late of London, broker, in his own person comes and (a) defends the wrong and injury, &c. and prays judgment of the afore- said writ of the said plaintiff, because he saith that the said W. H. on the day of obtaining the afore- said original writ and long before was, and from thence hitherto hath been, and still is, a merchant; and that he the said defendant, on the said day of obtaining the said original writ, was not, or at any time either before or afterwards hitherto has been, a broker, as by the said writ is above supposed; and this, &c. wherefore, inasmuch as the said W. H. is not named of the very mystery of which he really is, according to the form of the (b) statute of additions of surnames and names, in writs in which process of outlawry lies (c), lately made and provided, the said defendant prays judgment, and that, &c. S. URLIN.

Plea that defendant is of another additon than that by which he is sued, namely, merchant instead of broker.

(a) As to the necessity of this half defence, see Com. Dig tit. Abatement, l. 16. Ca. Lit. 127. b.

(b) 1. H. 5. c. 5.

(c) Hixon v. Binns, 3. Term Rep. 185. ante.

And the said plaintiff saith, that for the occasion before alleged, the said original writ of the said plaintiff ought not to be quashed, because he saith that the said defendant, on the day of obtaining the said original writ, was, and before then had been a broker, as by the said writ is above supposed, to wit, at, &c. afore- said; and this he prays may be inquired of by the country, &c.

Replication to the above plea, that defendant was a broker. as, &c.

AND the said defendant, by A. B. his attorney, comes and defends the wrong and injury, when, &c. and prays judgment of the said bill, because he saith that he the said defendant, before and at the time of exhibiting of the bill of the said plaintiff against him the said defendant, was, and from thence hitherto hath been and still is, in the custody of the sheriff of the county of M.; without this, that he the said defendant at the time of exhibiting the said bill was, or at any time since hath been, in the custody of the marshal of the Marshalsea of our said lord the now king, before the king himself; as in and by the said bill is above supposed; and this he is ready to verify; wherefore he prays judgment of the said bill, and that the said bill may be quashed, &c.

Plea that defendant is in custody of the sheriff and not of the marshal.

AND the said plaintiff says, that he the said defendant, notwithstanding any thing by the said defendant in his said plea alleged, ought to answer to the said bill of the said plaintiff in the court here, because he saith that he the said plaintiff, long before, and at the time of suing out the writ of attachment of privilege hereinafter mentioned, was, and continually since hath been, and yet is, one of the attorneys of the court of our lord the king, before the king himself here, to wit, at Westminster afore- said; and being so an attorney as afore- said, he the said plaintiff, before the day of exhibiting his said bill against the said defendant, to

Replication (to a plea of privilege by an attorney of the C. B. in an action brought in B.R.) that plaintiff is an attorney of B. R. and as such impleaded defendant in K. B. by attachment of privilege.

A B A T E M E N T.

wit, on the 28th day of November, in the 20th year of the reign of our sovereign lord the now king, according to the liberties and privileges for such attornies of the same court from time immemorial used and approved in the same court, sued and prosecuted out of the court of our said lord the king, before the king himself here, to wit, at Westminster, a certain writ of our said lord the king of attachment of privilege against the said defendant, directed to the then sheriff of Middlesex, by which said writ the said lord the king commanded the then sheriff of Middlesex aforesaid, that he should *attach* the said defendant and John Doe, if they might be found in his bailiwick, and safely keep them, so that he might have their bodies before our said lord the king here, to wit, on, &c. next after, &c. then next following, to answer to the said plaintiff, one of the attornies of the court of the said lord the king, before the king himself here, to wit, at Westminster aforesaid, according to the liberties and privileges of the same court for such attornies, time out of mind used and approved of in the same court, in a plea of trespass, and also to a bill of the said plaintiff against the said defendant for 40l. upon promises, according to the custom of the said court of the said lord the king, before the king himself to be exhibited, and that he should have there then that writ: at which day, before our lord the king at Westminster, came the said plaintiff in his proper person, and the said defendant in his proper person also appeared in the same court here, to answer to the said plaintiff according to the exigency of the said writ, and the then sheriff, to wit, J. W. esquire, and R. A. esquire, returned to the said court of our said lord the king, before the king himself here, to wit, at Westminster aforesaid, that by virtue of the said writ he had taken the body of the said defendant, and had his body ready before the said lord the king at Westminster at that day, as by the said writ the said sheriff was required, as by the record thereof, remaining in the said court of our said lord the king, before the king himself here, to wit, at Westminster aforesaid, manifestly appears: and the said plaintiff further saith, that the said writ of attachment of privilege, prosecuted as aforesaid by the said plaintiff, was prosecuted by him the said plaintiff, as to the said defendant, with intent to implead the said defendant for the causes of action in the said declaration above specified, and to cause him to appear in the said court here, and upon his said appearance to declare against him for the several causes of action above mentioned, according to the course and custom of the said court; and the said plaintiff, according to such his intention, afterwards, to wit, in Hilary Term, in the 20th year aforesaid, declared by bill against the said defendant in manner and form aforesaid; and this, &c.; (a) wherefore, &c. and that the said defendant may answer to the said bill of the said plaintiff, &c.

(a) A replication to such a plea should conclude to the *record* and not to the country, for no one can be an attorney but by the act of the court, which must be entered on record, and the court will not suffer a jury to inquire into their own act. 1. Stra. 76. W. DAVY.

AND

ABATEMENT.

5

AND the said defendant in his own person comes and defends the wrong and injury (a) (b) and says, that this court here ought not to take, nor will take, cognizance of the plea aforesaid, because he saith, that as well from royal dignity as from ancient custom in consequence thereof, from time immemorial used and approved of within this kingdom, "the Barons of the Exchequer, the clerk residing there, and all others, officers and ministers officiating there, whether of the clergy or others, belonging to the king's court, who should assist there by command," (c) ought not to be impleaded elsewhere than in the Exchequer " (d) so long as the Exchequer should be open : " and the said defendant further saith, that he the said defendant long before, and at the time of suing forth the original writ of the said plaintiff against the said defendant, was, and from thence hitherto hath been, and still is, one of the officers and ministers residing and officiating in the said court of Exchequer, to wit, one of the *sworn clerks in the lord treasurer's remembrancer's office* there, and as such entitled to the privilege aforesaid, to wit, at Westminster aforesaid ; and this he is ready to verify, "and he brings here into court the writ of our " lord the now king," (e) issuing out of the court of Exchequer aforesaid, closed in these words, to wit, George the Third [here set out the whole of the writ of privilege verbatim] ; which said writ being read and heard, the said defendant saith, that the said court here ought not to take; nor will take, cognizance of the said plea against him in this court here, &c. (f). J. MINGAY.

Plea to the jurisdiction of the court of C. B. of privilege by a sworn clerk in the lord treasurer's remembrancer's office in the Exchequer sued here.

(a) Vide Bl. Com. 3. vol. 238. Co. Lit. 127. Salk. 217. Ld. Raym. 282. with respect to making full defence in the pleas to the jurisdiction of the court.

(b) For the mode of imparling when the defendant means to plead his privilege, see Hard. 365. pl. 2. 1. Lutw. 43. Morg. V. M. 230. and 9. B. 4. 53. pl. 12. Bro. Priv. 25.

(c) Vide Barrington's case, Hurd. 164. and note (d).

(d) Should it not appear that the Exchequer was open at the time when this plea was pleaded ?

(e) For the reason, vide 6. Mod. 305. Morg. V. M. 24.

(f) The privilege may be allowed on producing the Liber Rubricus of the Exchequer, 10. Jones, 288. or by superpetendum, Salk. 546. For the legal privilege of the Exchequer, vide Hard. 365. 1. Lutw. 46. 6. Mod. 305. Salk. 511. 350. 31. H. 6. 19. 22. H. 6. 19. 6 Vin. Abr. 17th vol. 515. Morg. V. M. 24.

Mr. BULLER's Opinion on this plea. If the facts stated in the plea are true, I think the plea is good in form and substance, and the plaintiff cannot proceed

further in this action ; therefore he should enter judgment by *quassetur billa*, which he may do without costs.

Mr. DAVENPORT's Opinion. I observe that the plea is of the same Term with the declaration, so that there has been no imparlance either general or special, and in such case I apprehend that this plea in abatement, with a *proferet* of the writ of privilege, is a good plea to abate the suit, and that no replication or demurreur will prevail against it if the facts be true.

Mr. RUNNINGTON's Opinion. Though I am satisfied in my own mind, that the privilege which defendant has pleaded ought not to be allowed, and perhaps on serious argument would not be admitted ; yet I think it will be most prudent in the plaintiff to admit this plea, and enter up the judgment by *quassetur*. There are two cases, one in the time of Eliz. Sav. 20. the other in the time of James, Hob. 177. which seem strongly to support the privilege contended for, though there are other cases which seem strongly to deny it on similar points.

On these Opinions judgment for the defendant was entered as follows afterwards.

Judgment for defendant *quassetur billa* to the last plea. See Judgments in Abatement, tit. Judgments.

And hereupon the said plaintiff saith, that he cannot deny but that the plea of the said defendant, in manner and form aforesaid above pleaded, and the matters therein contained, are true, wherefore he will not farther prosecute his said suit there against the said defendant. Therefore it is considered that the said plaintiff take nothing by his said writ, and that the said writ, for the cause aforesaid, be quashed, and held for nought; and that the said plaintiff be in mercy for his false claim, and that the said defendant go thereof without day, &c.

Plea in abatement, that defendant is not an attorney, as alledged in the bill.

AND one William Lee, gentleman, against whom the said plaintiff hath exhibited his bill as one of the attornies of this court here, in his proper person comes and defends the wrong and injury, when, &c. and prays judgment of the said bill, because he says that the said defendant is not, nor ever was, one of the attornies of the court of our lord the king, before the king himself, at Westminster aforesaid, as he the said plaintiff hath above supposed; and this he the said defendant is ready to verify; wherefore he prays judgment of the said bill, and that the same may be quashed, &c.

W. WHITAKER.

Replication (a) in *assumpsit* to a plea of *coverture* in abatement, viz. that defendant is not covert, and issue thereon.

Award of inquiry conditional.

Venire.

AND the said plaintiff as to the said plea of the said Mary, by her above pleaded, says that the said original writ of him the said plaintiff in this action ought not to be quashed, because he says that the said Mary was not, nor is, *covert* of the said John Potter, in the said plea of the said Mary mentioned, in manner and form as the said Mary hath above in that plea alledged, and this he the said plaintiff prays may be inquired of by the country; and the said Mary doth the like, &c. Therefore, as well to try the said issue above joined between the parties, as to inquire of and assess the damages of the said plaintiff by reason of the non-performance of the said several *promises* and undertakings in the said declaration mentioned, in case the said issue shall be found for the said plaintiff, the sheriff is commanded that he cause to come here in fifteen days from the day of Saint Martin, twelve, &c. by whom, &c. and who neither, &c. to recognize, &c. as well, &c. V. LAWES.

(a) See Pleas of Coverture, post.

Plea that defendants sued as man and wife, *ne unques accouple in loyal matrimonia.*

GRAY and NORTON, *sued by the names of*
GRAY and WIFE,
at suit of
KETHER.

AND the said John Gray and Ann Norton, against whom the said plaintiff hath brought his original writ by the name of John Gray and Ann his wife, by their attorney, come and defend the wrong and injury, &c. and pray judgment of the original writ of the said plaintiff, because they say that the said J. G. and A. N. *were never joined together in lawful matrimony*, in manner and form as the said plaintiff hath above in and by his said writ supposed, and this they are ready to verify; wherefore they pray judgment of the

the said writ so prosecuted against them by the name of J. G. and A. his wife, and that the said writ may be quashed, &c.

R. COMYNS.

And the said J. Kether says, that the said original writ of him the said plaintiff, for the reasons above alledged, ought not to be quashed, because he says that the said A. N. is, and at the time of his bringing his original writ afore said was the wife of the said J. G. as by the said writ is above supposed; and this he prays may be inquired of by the country, &c.

Replication thereto.

AND the said defendant, by A. B. his attorney, comes and defends the wrong and injury, &c. and saith that the said plaintiff is an alien born, to wit, at C. under the ligeance of the French king, an adversary of our lord the now king, and of father and mother adhering to his said adversary; and the plaintiff entered into this kingdom of Great Britain, without the safe-conduct of the said lord the now king; and this he the said defendant is ready to verify, where, when, and as the court shall award; wherefore he prays judgment if the said plaintiff ought to be answered to his said bill, &c.

Plea to the person, that plaintiff is an alien enemy born.

R. DRAPER.

Vide Morg. V. M. 38. 2. Stra. tiff was born, and that he was not naturalized, to defendant's knowledge.

Annex affidavit of place where plain-

And the said plaintiff, notwithstanding anything above pleaded by the said defendant, says, that he the said plaintiff ought to be answered to his said bill, because he saith that long before a war was proclaimed between the said French king and our said lord the now king, and in time of peace between the said kings, to wit, on the 1st July 1727, the said plaintiff was and resided in this kingdom of Great Britain, to wit, at Westminster afore said, and continually ever since, and at the time of the making of the said promissory note, and the said several promises in his said declaration mentioned, and at the time of exhibiting his said bill, remained and resided, and now doth remain and reside, in this kingdom of Great Britain, by the licence and under the protection of our said lord the now king of Great Britain, to wit, at Westminster afore said; and this, &c.; wherefore, &c. and that the said defendant may answer his bill and declaration, &c.

Replication to the above plea, that plaintiff resided in these kingdoms in time of peace, and still resides under the protection and licence of our lord the king.

S. S. SMYTHE.

Vide Bac. Abr. 84. Morg. Dig. 38. &c. Lord Raym. 283. 853. 2. Stra. 1082. Salk. 46. Farley, 156.

AND the said defendant, in his own proper person, comes and prays oyer of the original writ of the said plaintiff, and it is read to him in these words, that is to say, George the Third, &c. [set out the writ] which being read and heard, he the said de-

Plea in abatement of the writ, that there is no return thereon, and no pledges found.

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defendant prays judgment of that writ, because he saith that the said writ hath *no return* thereupon, and that it *does not appear that the plaintiff hath found any pledges* to prosecute his said writ, as by law he ought to have done; and this he is ready to verify; wherefore he prays judgment of the said writ, and that the same may be quashed, &c.

Plea in abatement of an action of debt on bond in the B. R. that a (a) prior action is depending for the same cause in B. R.

AND the said defendant, in his own proper person, comes and defends the wrong and injury, &c. and says that he ought not to be compelled to answer to the said bill, because he says that before the exhibiting of the bill in this present action, to wit, in Michaelmas Term, in the 25th year of the reign of our lord the now king, in the court of our said lord the now king, before the king himself (the said court then and still being held at Westminster, in the said county of Middlesex), the said plaintiff impleaded the said defendant, and exhibited his certain bill against him in a plea of debt on demand, of and upon the same identical writing obligatory, in the said declaration in this present suit mentioned, as by the record and proceedings thereof remaining in the said court of our said lord the king, before the king himself, to wit, at Westminster aforesaid, more fully appears: and the said defendant further saith, that the parties in this and the said former suit are the same Thomas Martin, plaintiff, and the said Joan Bingley, defendant, and not other or different persons; and that the said former suit so brought and prosecuted against him the said defendant, by the said plaintiff as aforesaid, is still depending in the said court of our said lord the king, before the king himself, and not discontinued, tried, or determined; and this the said defendant is ready to verify; wherefore he prays judgment, if he ought to be compelled to answer to the said bill, &c.

T. DAVENPORT.

Affidavit of truth, &c. annexed. See Practical Forms.

The defendant is certainly competent until the *actual abatement* or discontinuance of the former suit, to plead the pendency of it, in abatement of this; "but the effect of such plea may be prevented by the carrying in of the roll of the judgment of such abatement or

"discontinuance, and that at any time." As defendant here only wants time, I am not aware of any plea so likely to obtain it, as a plea upon the fact of the former suit depending. *See* *vide* 1. *Ld.* Raym. 274. 2. *Ld.* Raym. 1014. *Salk.* 323.

V. LAWES.

(a) Sayer's Rep. 216.

Plea of variance between original writ and declaration.

AND the said defendant, in his own proper person, comes and defends the wrong and injury, &c. and craves oyer of the original writ aforesaid, and it is read to him in these words, to wit: George the Third, &c. [set out the writ *verbatim*] which being read and heard, the said defendant prays judgment of the said writ, and pleads that there is a variance between the said writ and declaration thereupon, in this particular, that is to say, for that in and by the said writ it is said, Whereas the said Thomas, *on the 1st day of October, A. D. 1771*, at, &c. was indebted to the said plaintiff in the

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the sum of 40l. of lawful, &c. for divers works and labours of the said plaintiff and his servants, by him the said plaintiff and his servants, with horses, waggons, carts, and other carriages of the said plaintiff, for the said defendant; at the special instance, &c. of the said defendant, before that time done and performed; and in the said declaration aforesaid, founded upon the said writ, it is complained, That whereas the said defendant, *on the 1st day of November*, on, &c. was indebted, &c. Therefore in that there is manifest variance in this, to wit, that the writ aforesaid sets forth as follows, that is to say, &c. &c. and in the declaration aforesaid, founded on the said writ, it is complained and alledged as follows, to wit, &c. &c. in that there is a manifest variance. Therefore, because there is a manifest variance between the original writ aforesaid and the said declaration, in the particulars aforesaid, he the said defendant prays judgment of the writ aforesaid, and that the same may be quashed, &c. J. MORGAN.

AND the said defendant, in his own proper person, comes and defends the wrong and injury, &c. and prays oyer of the original writ of the said plaintiff, and it is read to him in these words, to wit, George the Third, &c. [set out the writ *verbatim*] which being read and heard, the said defendant prays judgment of the writ aforesaid, "and also of the declaration of the said plaintiff" against the said defendant, thereon founded, because he says that there is a variance between the writ aforesaid and the declaration of the said plaintiff against the said defendant, founded on the writ aforesaid, in this, to wit, that in and by the said writ the said defendant is called by the name and addition of J. S. late of London, *merchant*, and in the declaration aforesaid, founded on the said writ, by the name and addition of J. S. late of London, *mercier*; wherefore, inasmuch as there is such variance between the writ aforesaid, and the declaration of the said plaintiff thereon founded against the said defendant, in the addition of the said defendant, he the said defendant prays judgment "of the writ and declaration" aforesaid; (a) and that the same may be quashed, &c.

Another, of variance between the writ and count in the addition. See the notes infra.

(b) 2 Mod. Intran. prays judgment of the partition, though at the beginning it prays judgment of the writ, a Instr. Cl. 44. Hard. L. 9. c. 5. p. 152. b. of variance between the writ and count, quotes *Bracton*, which vide in his cap. &c. *exec. con. Bro. p. 415*, Item *cudit breve at a quis per narrationem in iudicio factum recesserit de brevi suo, &c.* Per Gilb. Com. Pl. 52. on variance between

the writ and the count, the writ may be abated. So Finch 364. 77. tit. Variance, both shall abate, he quotes several cases. Plaintiff cannot demur, because he would not then maintain his writ, Gilb. 259. Salk. 218. and Gilb. 51, &c. As to time of pleading pleas of variance in abatement, this plea may be pleaded after the expiration of four days.

BAYLEY & UXOR,
at suit of
VINCENT.

AND the said Thomas, and she who in this declaration is named Hannah, otherwise Johannah, in their own proper person come and plead that she was baptized by the name of Ann

Plea of misnomer in the christian name of wife pleaded to an action against husband and wife,

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and not Hannah, otherwise Johannah, and by the name of Ann hath always been called and known, and not by the name of Hannah, otherwise Johannah, as by the said declaration is above supposed; and this they are ready to verify; wherefore they pray judgment, and that the said bill may be quashed, &c.

The above plea was held good, vide E. 22. c. 5. s. 17. but it is added, "The husband must likewise answer for himself."

Abatement to the writ in dower, that deceased husband was a knight.

AND the aforesaid tenant saith, that the said J. T. the late husband, &c. long before he closed his last day was made a knight, and this, &c. wherefore he prays judgment of the writ aforesaid, and the demandant doth not deny this; wherefore let the writ be quashed, &c.

The jurisdiction of the sessions for the Tower hamlets pleaded in abatement of an indictment at the Middlesex sessions.

AND the said William Whitrow, in his own proper person, comes, and having heard the said indictment read, says that the court of our lord the king here ought not to take cognizance of the trespass and assault in the said indictment above specified, because, protesting that he is not guilty of any trespass and assault upon the said Jacob Collier, he saith that the said trespass and assault above supposed against him (if any such there were) were committed within the precincts and liberties of the Tower of London of our said lord the king, that is to say, at the precinct of the Old Artillery Ground, within the liberties, boundaries, privileges, jurisdictions, and governments of the fortress and palace of the Tower of London, and within the limits and boundaries set down, mentioned, and described in the schedule annexed to the hereinafter in part recited letters patent, and not elsewhere, out of the said precinct and liberties of the Tower aforesaid; and that James the Second, late king of England, by his letters patent under the great seal of England, bearing date at Westminster, the tenth day of June, in the third year of his reign, reciting (amongst other things) that several differences had then lately arisen between the officers of his late majesty of his fortress and palace of his Tower of London, and the officers of his said late majesty's city of London and county of Middlesex, touching the liberties and jurisdictions of his said majesty's said Tower of London which had occasioned the breach of the peace, and divers other inconveniences were likely to ensue thereupon in time to come, unless the same should be prevented by his said majesty's royal authority; and further reciting that by his said majesty's order in council, by him issued in that behalf, bearing date the twelfth day of May then last past, his said majesty had directed an enquiry to be made into the ancient boundaries, liberties, and jurisdictions of his said Tower of London; and that finding upon due examination had thereof, that the same had been set out and ascertained by several of the court leet of his said majesty's said Tower of London and jurisdiction of his said Tower aforesaid, being ancient persons, who

had for a great number of years been inhabitants within the said liberty, and other persons of good judgment and credit authorized and appointed by George lord Dartmouth, master general of his said majesty's ordnance, and chief governor of his said majesty's said Tower of London, to view and take the admeasurements, and truly set out the abuttings and boundaries of the said liberty, and every place thereunto belonging; and that being satisfied upon the whole matter, that the boundaries and jurisdictions of the said liberty were in such manner as is mentioned in the schedule thereto annexed, his said majesty did, for the better ascertaining the true boundaries, liberties, and jurisdictions of his said Tower, and for preventing of all further differences between his said officers of his said Tower of London, and the officers of his said city of London and county of Middlesex, concerning the premises, and that justice might for ever thereafter be duly administered to his loving subjects, as well within his said liberty as within his said city and county aforesaid respectively, by the proper and respective officers to whom the execution thereof did of right appertain, of his special grace and certain knowledge and mere motion, did, by the said letters patent, for himself, his heirs and successors, will, grant, confirm, constitute, declare, and appoint (amongst other things therein mentioned), that all and every the place and places, limit and limits in the said schedule thereunto annexed particularly mentioned and described, and every part and parcel of them and every of them, should be for ever thereafter, called, reputed, and taken to be, the liberties of the Tower of London aforesaid, and that the same should be for ever exempted and free from the government and correction of the mayor, aldermen, and justices of the peace, coroners of or within the city of London, or the liberties thereof, and of and from the government and correction of the justices of the peace and coroners of and within the county of Middlesex, and from all power and authority, privilege and jurisdiction of them or either of them; and that the said several places and limits in the schedule thereunto annexed particularly mentioned, described, and set down, and every part and parcel of them, and every of them, by what name or names soever they or any of them then were or therefore had been called or known, should be for ever thereafter annexed, united, and consolidated into the said liberty of the Tower of London aforesaid, and be called, reputed, deemed, taken, or known to be parts, parcels, and members of and within the limits, boundaries, liberties, privileges, jurisdictions, and governments of his fortress and palace of his said Tower of London, any law, custom, usage, prescription, or other matter or thing whatsoever to the contrary notwithstanding; and his said late majesty did thereby for himself, his heirs and successors, grant, ordain, and declare, that the then chief governor of the Tower of London, and every chief governor thereof for the time being, from time to time, and at all times for ever, by himself or his sufficient deputy or deputies, should have the return and execution of all writs, process, precepts, and mandates of his said majesty, his heirs

Reciting letters patent, and that the liberty of the Tower should be for ever exempted, &c.

and

Sessions of the
peace to be
holden four
times in the year
with a *non intro-
mittant* clause.

and successors, within the said limits, precincts, places, and liberties, and should have power to administer and give to such deputy or deputies the usual oath for the due execution of such office and trust: and his late majesty's further will and pleasure was, and he did thereby further for himself, his heirs and successors, ordain, constitute, and declare, that from time to time, and at all times for ever thereafter, there should be a sessions of the peace holden within the said several places, limits, precincts, or liberty, by justices of the peace to be from time to time assigned and appointed by his said majesty, his heirs and successors, which said justices of the peace, to be assigned as aforesaid, should hold sessions of the peace at the four usual times in every year, by the statute in that behalf limited and directed, in such convenient place within the precincts and liberty aforesaid, as the chief governor of the said Tower of London, then and for the time being, should for that purpose assign and appoint; and should have full power and authority to do and execute all and every such matters and things which to the office of a justice of the peace did belong or appertain: and his said late majesty did thereby for himself, his heirs and successors, strictly enjoin and forbid, as well the sheriffs and justices of the peace and coroners, as also all other the officers and ministers of his said majesty, his heirs and successors, within his said city of London and county of Middlesex, or either of them, and all other the bailiffs, officers, and ministers of any of his courts whatsoever, that they or any of them should not intermit or intermeddle in the said precincts or liberties of his Tower of London, or any of them: and his said late majesty did by the said letters patent, for himself, his heirs and successors, grant and declare that those his said letters patent, or the enrolment thereof, should be in all things firm, valid, and effectual in the law, according to the true intent and meaning thereof, notwithstanding the not taking or finding any inquisitions of office or inquisition of office, touching or relating to the premises or any part thereof, and notwithstanding the mis-reciting, or not truly and perfectly reciting or describing any of the ancient boundaries, liberties, limits, or jurisdictions of his said Tower of London, belonging or of right appertaining, or of any of the limits and places thereby made and declared to be parcel of his said liberty, or in the schedule thereto annexed mentioned, or any part of, or any other imperfection or defect in the said letters patent contained, or any statute, act, usage, prescription, custom, provision, or restriction, or any other matter, cause, or thing whatsoever to the contrary thereof in any wise notwithstanding: and the said William Whitrow says, that the schedule to the said letters patent annexed, as far as concerns and relates to the abuttings and boundaries of the precinct of the Old Artillery Ground, within the liberty of the Tower of London, is in the words following, that is to say, &c. [set forth the schedule] as in and by the said letters patent, and the said schedule thereunto annexed, doth more fully appear; and this he the said William Whitrow is ready to verify; wherefore he prays judgment whether

ther the court of our said lord the king here ought or will further proceed against him, and that he may be dismissed, and not farther aggrieved, &c. ; and the said William Whitrow brings into court here the letters patent aforesaid, and the schedule aforesaid, which respectively testify the liberties, privileges, limits, and exemptions respectively aforesaid. [See Proceedings before Justices.]

AND the said defendant, by A. B. his attorney, comes and defends the wrong and injury, when, &c. and prays judgment of the said writ, because he says that the said G. C. (the testator) in his life-time, constituted him, the said plaintiff, and one J. B. to be executors of his last will and testament, and afterwards died, and after whose death the said J. B. as the executor of the last will and testament of the said G. C. administered divers goods and chattels which were of the said G. C. at the time of his death, to wit, at Westminster aforesaid, which said J. B. at the time of the suing out the original writ of the said plaintiff, was, and still is living, to wit, at &c. aforesaid ; and this, &c. wherefore for that the said J. B. is not named in the writ aforesaid, the said defendant prays judgment, &c. and that, &c.

Plea in abatement to an action at the suit of an executor, that testator constituted plaintiff and another executor who is not named.

See Executors, &c. vide 5th Burr. 2613. This matter must be pleaded in abatement, and cannot be given in evidence.

Powers and Cocke, 1. Ld. Raym. 63. as to the conclusion.

AND the said John Smallman, in his own person, comes and defends the wrong and injury, &c. and prays judgment of the said bill, because he says that the said David (the testator) in his life-time, to wit, on the sixth of February, A. D. 1745, at, &c. aforesaid, made his last will and testament, and thereby constituted and appointed the said defendant and William Jones executors thereof, and afterwards, to wit, on the same, &c. at, &c. the said defendant and William Jones duly proved the said will, and took upon themselves the burthen of the execution thereof ; and the said defendant brings into court here the letters testamentary of the said David, which fully prove that the said defendant and William Jones are the executors of that will, (a) and have the administration thereof, &c. ; and the said defendant further says, that the said William Jones is still living, to wit, at, &c. aforesaid ; and this, &c. : wherefore, inasmuch as the said William Jones is not named a defendant in the said bill, the said defendant prays judgment, &c. and that, &c.

Plea in abatement by defendant sued as executor, that testator appointed defendant and another (who is not named a defendant) executors.

B. LUCAS.

Ld. Raym. 63.
1. Bac. Abr. 396. Godolphin, 134.
Wentw. Off. of Executors, 95. 1. Lev.
161. Sid. 242.

(a) Must aver that the other administered, 1. Lev. 161.

AND

Plea in abatement, that plaintiffs are not executors.

AND the said defendant, by A. B. his attorney, comes and defends the wrong and injury, &c. and craves oyer of the letters testamentary of the said Margaret here brought into court, which are read to him in these words, that is to say, By the tenor, &c. (granting administration to Margaret Reynolds and Ann Edwards, executrices); which being read and heard, the said defendant prays judgment of the said bill, because he saith that the said Benjamin Reynolds and Theophilus Edwards are not nor ever were executors, nor is nor ever was either of them an executor of the last will and testament of the said M. R.; and this, &c.: wherefore, inasmuch as the said B. R. and T. E. are above named and called executors of the last will and testament of the said Margaret, the said defendant prays judgment, &c. and that, &c. [1. Ld. Raym. 638.]

Plea by defendant sued as executor, that the testator appointed an executor who renounced, and that administration during the minority of an infant was granted to defendant.

AND the said Charles Welsh, against whom the said John Ashmore hath exhibited his bill by the name and description of Charles Welsh, executor of the last will and testament of Anderson Ashmore, deceased, by Jacob Anderson his attorney, comes and says, that the said Anderson in his life-time, to wit, on the 5th day of December 1745, at Ross aforesaid, duly made his last will and testament in writing, and thereby constituted John Jones sole executor thereof, and afterwards, to wit, on the 1st day of March, in the year aforesaid, at Ross aforesaid, died without revoking or altering his will, and after his death, to wit, on the 18th day of March 1745, aforesaid, at, &c. aforesaid, the said John Jones duly renounced the said executorship; and thereupon afterwards, and long before the exhibiting of the said bill of the said plaintiff, to wit, on the same, &c. last aforesaid, at, &c. aforesaid, administration of all and singular the goods and chattels, rights and credits which were of the said Anderson at the time of his death, with the will of the said Anderson annexed, during the minority of Paul Ashmore, by Edward Wynne, doctor of laws, vicar-general and official principal of the right reverend father in God, Henry, by divine permission lord bishop of Hereford, lawfully constituted, to whom the commission of the administration aforesaid did of right belong, was duly committed to the said defendant, and the said defendant brings here into court the letters of administration of the aforesaid official, which give full evidence hereof, and are dated the day and year last aforesaid, and the same are still in full force; and the said Paul Ashmore still continues in his minority, to wit, under the age of twenty-one years, in which case the defendant ought to be sued as administrator of the goods and chattels which were of the said Anderson at the time of his death, with the will of the said Anderson annexed, during the minority of the said Paul Ashmore, and not as executor of the last will and testament of the said Anderson; and this, &c. wherefore he prays judgment, &c. and that the same, &c.

AND

AND the said Richard and Elizabeth, by Richard Pinlott their attorney, come and defend the wrong and injury, &c. and pray judgment of the said bill, because they say that the said John Stacy, on the 20th day of January 1754, at Westminster aforesaid, died intestate, after whose death, to wit, on the 4th day of February 1754 aforesaid, at, &c. aforesaid, administration of all and singular the goods and chattels, rights and credits which were of the said John Stacy at the time of his death, by John Bettesworth, doctor of laws, in and throughout the whole archdeaconry of London, official, lawfully constituted, was in due form of law committed to the said Elizabeth; *without this, that* the said Elizabeth is or ever was executrix of the said John, as is by the said bill above supposed; and this, &c. wherefore, &c. and that the same, &c. J. YATES.

Plea in abatement by husband and wife sued as executrix, that administration was granted to the defendant Elizabeth.

Traverse.

In the County Court.

BRIDGES
at suit of
PUENOCK.

AND the said defendant now here pleads and giveth the court here to understand and be informed, that since the last continuance of the aforesaid plea, to wit, since the 20th day of January now last past, till which day the said plea was last continued, and before this day, to wit, on the 20th day of April, the said plaintiff was and now is excommunicated, and he shews to the court here the letters patent of the right reverend father in God, Isaac, by divine permission bishop of Worcester, which testify the same in these words following, that is to say, to all and singular, &c. [set out the letters of significavit to the end, *verbatim*]; whereupon the said defendant prays that the plaint aforesaid may be from henceforth staid without day until, and so forth; with this, that the said defendant will verify that the said plaintiff mentioned in the plaint aforesaid, as plaintiff in the said plaint, and the said plaintiff mentioned in the said letters patent of the said bishop, are one and the same person, and not different persons, &c.

Excommunication of plaintiff pleaded (after the last continuance) in the county court.

EATON and Another
at the suit of

The ATTORNEY GENERAL.

AND now at this day, that is to say, on Friday next after eight days of Saint Hilary, in this same Term, until which day the plea aforesaid was last continued, comes the said John by his attorney aforesaid, and protesting that the plea already pleaded by him the said John and the aforesaid Edward Nicholas, in manner and form aforesaid pleaded, and the matters therein contained, are sufficient in law to bar the said now attorney general from prosecuting the said information; for plea he the said John says, that the said Edward Nicholas, in the said information named, and against whom, together with the said John, information is laid as aforesaid, after the last continuance of the said plea, that is to say, on the 20th day of January, A. D. 1784, at, &c. aforesaid, died; and this he the said John is ready to verify; wherefore he prays judgment, and that the said information may be quashed, &c. and he the said John dismissed the said court here, entirely discharged therefrom.

Plea to an information in the Exchequer, that one of the defendants is dead since the last continuance.

AND

Plea in abatement, that the bill is filed against defendant as a common person, and not as clerk to the chief clerk.

AND the said William Hopkins, one of the clerks of Edward Ventris, esq. chief clerk, of our sovereign lord the king, before the king himself, comes in his proper person and prays judgment of the said bill, because he says that all such clerks of the said chief clerk have, time out of mind, been sued and impleaded, and ought only to be sued and impleaded in all pleas, at the suit of a subject in the said court, before the said king and his predecessors, kings and queens of this realm, by bill to be there filed against them as present in the said court; and the said William further saith, that he now is, and at the time of exhibiting the said bill and long before was, one of the said chief clerks; and this he is ready to verify; wherefore, and for that the said Ann Blagrove hath exhibited her said bill in the said court against the said William, as an attorney of the said court, and not as one of the clerks of the said chief clerk, the said William prays judgment of the same, and that the said bill may be quashed, &c.

Plea in abatement by two defendants in trover of a misnomer of one.

AND the said Thomas Fellows, and also William Myers, against whom and the said Thomas Fellows the said Levy Abraham hath exhibited his bill by the names of Thomas Fellows and Richard Myers, come in their proper person and defend the force and injury, &c. and pray judgment of the said bill, because he the said William Myers was baptized by the name of William, to wit, at London aforesaid, in the parish and ward aforesaid, and from his baptism hitherto has been always known and named by that name; without this, that he the said William now is or ever was known or named by the name of Richard, as by the said bill is above supposed; and this they are ready to verify; wherefore they pray judgment of the said bill, and that the said bill may be quashed, &c.

This plea as now settled by me is bad in law. It can legally be pleaded by Myers only; but then the bill would have

been quashed only as to him, and the plaintiff might have gone on against Fellows.

V. Grant.

Plea that another joined in the promise, and was not made by defendant alone.

AND the said Peter Thompson, by William Loveridge his attorney, comes and defends the wrong and injury, when, &c. and prays judgment of the bill aforesaid, and that the same may be quashed, because he says that the said several supposed promises and undertakings in the said bill mentioned, if any such were made, were and each of them was made, as well by the said John Bockett, as the said P. T. *and not by the said P. T. alone*, which said John Bockett is still living, to wit, in London aforesaid, in the parish and ward aforesaid; and this the said P. T. is ready to verify; wherefore, inasmuch as the said John Bockett is not named in the said bill, the said P. T. prays judgment thereof, and that the same may be quashed, &c.

AND

And the said William, as to the said plea of the said P. T. by him above pleaded, says, that for any thing therein alledged, the said bill of the said William ought not to be quashed, because he says that the said several promises and undertakings in the said declaration mentioned were, and each of them was, made by the said P. T. alone, in manner and form as the said William hath above thereof complained against him; and this he prays may be inquired of by the country, and the said P. T. doth the like. Therefore, &c.

Replication thereto that defendant alone promised.

THO. BARROW.

This replication was withdrawn, the plaintiff's attorney finding, on examination, that he could not prove a special

promise by defendant to pay the money, only that it should be paid. Vide the case reported, *Esplanade's Cases* at Nl. Pri. 64.

AND the said Michael, by Edward Lodge his attorney, comes and defends the wrong and injury, when, &c. and as to the supposed promises and undertakings in the said 1st, 2d, 5th, 6th, 9th and 10th counts of the said declaration mentioned, says, that he did not undertake and promise in manner and form as the said Thomas hath above thereof complained against him; and of this he puts himself upon the country, &c. And as to the 3d, 4th, 7th, and 8th counts of the said writ and declaration mentioned, the said Michael claims judgment of the writ aforesaid, and the declaration thereon founded; because he says, that the said several supposed promises and undertakings in the said 3d, 4th, 7th, and 8th counts mentioned, if any such ever were made, were, and each of them was made by A. and B. and the said Michael jointly, and not by the said Michael alone, as the said Thomas hath in and by his said writ and declaration supposed, and that the said A. and B. at the time of the commencement of this suit, were and yet are living, to wit, at Ulverstone aforesaid, in the county aforesaid; and this he the said Michael is ready to verify: wherefore, inasmuch as the said A. and B. are not named in the said writ, or the said declaration thereon founded, the said Michael prays judgment, and that the said writ and declaration may be quashed, &c.

Plea in bar non-assumpsit to some counts, and in abatement to others, that the promises were made jointly with another, and not by the defendant alone.

THO. BARROW.

AND the said Michael Van Millinger, Samuel Poole, Thomas Quintin, Alexander Goodwin, Peter Gaussen, Gabriel Clarmont, James Scawen, William Downes, Isaac Lucas, and James Flint, by Giles Bleasdale their attorney, come and defend the wrong and injury, when, &c. and say, that the said several promises and undertakings in the said declaration mentioned (if any such were or was made) were, and each and every of them was made by them the said defendants, together with one James Farquharson, John Atkins, Peter Aurioll, and William Moffatt, jointly, and not by them the said defendants (naming them) separately from and without the said James Farquharson, John Atkins, James Peter Aurioll, and William Moffatt, to wit, at Westminster; and that the said J. F. J. A.

Plea in abatement, that some of the plaintiffs were partners with the defendants, and therefore could not sue.

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C

J. P. A.

J. P. A. and W. M. at the time of exhibiting the bill of the said plaintiffs against them, were and still are living, and in full life, to wit, at Westminster aforesaid, in the county aforesaid; and this they the said defendants (naming them) are ready to verify: wherefore, inasmuch as the said J. F. J. A. J. P. A. and W. M. are not named in the said declaration, they the said defendants (naming them) pray judgment, and that the same declaration may be quashed, &c.

V. GIBBS.

N. B. Mr. Gibbs, after drawing this plea, thought it should be in bar, and so altered it.

Plea in abatement to an indictment in B. R. that the house is in the parish of Tiverton, which is chartered by letters patent from George the First, authorising a mayor, recorder, &c. to take cognizance of all things within the parish, and excluding justices of the county.

AND the said Henry Finch, George Rossile, George Peard, Samuel Hatfell, Henry Dull and Elizabeth his wife, Margaret Rossiler, and Gregory Sharland, by Oliver Jones their attorney, come into the court of our said lord the now king, before the king himself here, and pray judgment of the said indictment, and that the same may be quashed, because they say, that true it is that the said messuage called Pall-House in the said indictment mentioned, is situate, lying, and being in the parish of Tiverton aforesaid, in the said county: but the said Henry Finch, &c. says, that the town and the said parish of Tiverton, in the said county of Devon aforesaid, are, and at the time of granting the letters patent herein after mentioned were, an ancient town and parish, that is to say, at the parish of Tiverton aforesaid; and that our late sovereign lord George the First, late king of Great Britain, &c. by his letters patent under the great seal of Great Britain, bearing date at Westminster, the fourth day of December, in the eleventh year of his reign, willing (amongst other things) that for ever thereafter in the said town and parish there should be continually had one certain and undoubted method of and for the keeping of the king's peace, there did (amongst other things), for himself, his heirs and successors, will, constitute, ordain, grant, confirm, and declare, that the said town and parish of Tiverton, in the said county of Devon, should be and remain from thenceforth for ever thereafter a free town and parish of itself, and that the inhabitants of the said town and parish, and their successors, should be for ever thereafter, by virtue of the said letters patent, one body corporate and politic, in deed, fact, and name, by the name of The Mayor and Burgeses of the Town and Parish of Tiverton, in the County of Devon, and them, by the name of mayor and burgeses, &c. in one body corporate and politic, in deed, fact, and name, did really and fully, for himself, his heirs and successors, enact, make, ordain, constitute, create, confirm, and declare, by the said letters patent, and that by the same name they should have perpetual succession; and the said late king did, by the said letters patent, for himself, his heirs and successors, grant, ordain, confirm and declare, that from thenceforth for ever thereafter there should be within the parish aforesaid, one of the most discreet and honest men of the town and parish aforesaid, in form thereafter in the said letters patent mentioned, to be chosen, that should be, and should be

Letters patent
set out.

be named, mayor of the said town and parish aforesaid; and that there should be likewise, from time to time, within the town and parish aforesaid, twelve of the most discreet and honest inhabitants of the town and parish aforesaid, who should be, and should be named, lawful burgessees of the town and parish aforesaid; and that the mayor of the town and parish aforesaid, then after in the said letters patent named, and every other mayor of the town and parish aforesaid, should be of the number aforesaid of the twelve capital burgessees of the town and parish aforesaid; and that there should be within the said town and parish, from time to time, twelve other of the devouteest and honestest inhabitants of the town and parish aforesaid, who should be, and should be named, assistants of the town and parish aforesaid; which said capital burgessees and assistants should be, and should be named, the common council of the said town and parish. And our late sovereign lord king ^{Constituting} George the First, by his said letters patent, for himself, his heirs ^{mayor.} and successors, did assign, name, constitute, and make Nathaniel Thorn, an inhabitant of the town of Tiverton aforesaid, to be the modern mayor of the town and parish aforesaid: and our said late sovereign lord George the First, by his said letters patent, willed, that the same Nathaniel Thorn should be and continue in the office of mayor of the same town and parish, from the date of the said letters patent, until Tuesday next after the feast of St. Bartholomew then next ensuing, and from that day until another capital burgessees of the town and parish aforesaid should be chosen and sworn into the same office, according to the ordinances and constitutions in the said letters patent thereafter expressed and declared, if the said Nathaniel Thorn should so long live. And ^{Capital burges-} the said late king George the First, by his said letters patent, for ^{the} himself, his heirs and successors, did assign, nominate, constitute, confirm and declare Oliver Peard, &c. inhabitants of the town and parish aforesaid, to be capital burgessees of the said town and parish, to continue in the same office during their natural lives, unless in the mean time, for their mal-government or ill behaviour in that behalf, they, or either of them, should be removed from the said office. And moreover, the said late king George the First, by ^{Certain inhabit-} his said letters patent, for himself, his heirs and successors, did name, ^{ants assistants.} constitute, make, confirm, and declare Leonard Blagden, &c. inhabitants of the town and parish aforesaid, to be assistants of the said town and parish, to continue in the said office during their natural lives, unless, &c. as before, willing notwithstanding, and the said late king, by the said letters patent, did declare, that it should be, and was his will and pleasure, that the said Nathaniel Thorn did not take upon him the execution of the office of mayor of the town and parish aforesaid, until he had taken a corporal oath to execute the said office rightly and faithfully in all things, and by all things touching the same office, before William Coleman, &c. or any two or more of them to whom our said late king George the First did, by the said letters patent, give and grant full power and authority to administer such oath to the said Nathaniel

Mayor and recorder for time being and persons who should have exercised office of mayor to be justices of the peace within limits and precincts of the town and parish of T.

thaniel Thorn, without any other warrant or commission in that behalf to be procured or obtained from the said late king George the First, his heirs or successors. Moreover, our said late king George the First, by his said letters patent, willed, that the said capital burgesses and assistants of the town and parish aforesaid, who for ever thereafter for the time being should be named, before they, or either of them respectively, should be admitted to the execution of the offices of capital burgesses or assistants of the town and parish aforesaid, should take a corporal oath before the mayor of the town and parish aforesaid for the time being, that they, and each of them, would well and faithfully execute their respective offices in all things and by all things appertaining to the said office. [The plea then proceeds to recite several other clauses of the charter, directing the mode of electing their several officers above mentioned, and appointing a recorder to continue in office *durante bene placito*, with the manner of his election, &c.]. And moreover, the said late king George the First willed, and by the said letters patent, for himself, his heirs and successors, did grant and confirm to the said mayor and burgesses of the town and parish aforesaid, and their successors, that the said Nathaniel Thorn, in the said letters patent named to be mayor of the town and parish aforesaid, and the aforesaid Oliver Peard, during the time that the said Nathaniel Thorn should execute the said office of mayor of the town and parish aforesaid, and every other mayor of the town and parish aforesaid who should thereafter be for the time being, and also the said John Webster, in the said letters patent named to be recorder of the town and parish aforesaid, during the time he should execute the office of recorder of the town and parish aforesaid, and every other recorder of the town and parish aforesaid, who should thereafter be for the time being, and every person who should have and exercise, or thereafter should have and exercise, the office of mayor of the town and parish aforesaid, after that he should depart from the office of mayor of the said town and parish, during one whole year immediately next after his departure from such office, from thenceforth for ever thereafter, might and should be, and each and every of them might and should be, our said late sovereign lord the king's justices, and the justices of his heirs and successors, to preserve and keep the peace, and the peace of his heirs and successors, within the town and parish aforesaid, and the precincts and limits of the same, and to keep, and cause to be kept, all ordinances and statutes made for the good of the peace of our said late king George the First, his heirs and successors, and for the preservation of the same, in all its articles, within the town and parish aforesaid, and the limits and precincts of the same, according to the form and effect thereof, to chastise and punish all delinquents against the form of the same ordinances and statutes, or any of them, within the town and parish aforesaid, the liberties and precincts of the same, as was to be done, and according to the form of the said statutes and ordinances, and to cause all those who should use any threatening to any one or any of the people

people of the said late king George the First, his heirs and successors, for the hurting of their bodies, or the burning of their houses, to find security for the peace, and for their good behaviour towards the said late king George the First, his heirs and successors, and the people of the said late king George the First, his heirs and successors; and if they should refuse to find such security, then to cause them to be safely kept in the prison of the said late king George the First, his heirs and successors, until they should find such security; and that the said Nathaniel Thorn and Oliver Peard, during the time that the said Nathaniel Thorn should execute the office of mayor of the town and parish aforesaid, and the mayor of the town and parish aforesaid for the time being, and the said John Webber, during the time that he should be recorder of the town and parish aforesaid, that the recorder of the town and parish aforesaid for the time being, and the aforesaid person who should have and execute, or thereafter should have and execute the office of mayor of the town and parish aforesaid, or any two or more of them whom the said late king George the First would have the mayor or recorder of the town and parish aforesaid for the time being to be one, should have full power and absolute authority from time to time for ever, to inquire, by the oaths of honest and lawful men of the town and parish aforesaid, by whom the truth might be the best known, of all and all manner of petty treasons, murders, homicides, felonies, witchcrafts, incantments, sorceries, magic arts, trespasses, engrossers, forestallers, regrators, and extortioners whatsoever, of all and singular other misdemeanors and offences whatsoever, of which the justices assigned to keep the peace of the said late king George the First, his heirs and successors, in any county of this realm of England, ought and might lawfully inquire into, by whomsoever and howsoever, within the said town and parish aforesaid, the liberties and precincts of the same, thencefore done or committed, or which thereafter should happen to be there done or attempted; and also of all those who, within the town and parish aforesaid, or in the liberties or precincts of the same, in conventicles, against the peace of the said late king George the First, his heirs and successors, in disturbance of the people of the said late king George the First, his heirs or successors, or with strength had gone or ridden armed, or thereafter should presume to go or ride armed, and also of all those who had lain in wait to maim or kill the people of the said late king George the First, his heirs or successors, or who thereafter should presume to lay in wait, and also of all hostlers, and also of all and singular other persons who had offended or attempted, or who thereafter should offend or attempt, within the town and parish aforesaid, or the precincts or liberties thereof, in the abuse of weights and measures, or in selling of victuals against the form of the ordinances and statutes, or any of them, made for the common utility of the realm of England, and of the people of the late king George the First, his heirs and successors; and also of whatsoever constables, gaolers, and other officers to whom

Authority to hold sessions.

the execution of the offices about the premises should belong, or any of them, who had unduly behaved themselves, or thereafter should presume unduly to behave themselves, or who had been remiss or negligent, or thereafter should happen to be, within the town and parish aforesaid, or the liberties or precincts of the same, and of all and singular articles and circumstances, and other things whatsoever, by whomsoever, and howsoever, within the town and parish aforesaid, or the liberties or precincts of the same, done, committed, or which should thereafter happen to be done or attempted howsoever, concerning the premises or any of them, and inspect all indictments whatsoever which thereafter should be taken before the said Nathaniel Thorn and Oliver Peard, during the time in which the said Nathaniel Thorn should execute the office of mayor of the town and parish aforesaid, and the mayor of the town and parish aforesaid for the time being, and the said John Webber, the recorder of the town and parish aforesaid for the time being, and the aforesaid person who should have and execute the office of mayor of the town and parish aforesaid, or any two or more of them (the mayor or recorder of the town and parish aforesaid for the time being always to be one), and to issue out and continue process on the said indictments against all and singular persons indicted, until they should cause them to be taken, or until they should render themselves to be outlawed, and to hear and determine all and singular the premises which, according to the laws and statutes of this kingdom, in such case were accustomed and ought to have done, and to chastise and punish all offenders, and every of them, for their offences, by fines, redemptions, amerciaments, forfeitures, and others, according to the laws and customs of England, and the forms of the ordinances or statutes aforesaid; yet notwithstanding that they do not proceed to the determination of any petty treason, felonies, or other offences whatsoever touching the loss of life or members within the town and parish aforesaid, without the special licence of our said late sovereign lord king George the First, his heirs and successors. Moreover, our said late sovereign lord king George the First did will, and by the said letters patent, for himself, grant the said mayor and burgesses of the town and parish aforesaid, and their successors, that no justice of our said late king, his heirs and successors, within the aforesaid county of Devon, should anywise enter into, or intermeddle to do or execute anything within the town and parish aforesaid, or the liberties and precincts of the same, which justices of the town and parish aforesaid, by virtue of the said letters patent, could or ought to do and execute, provided that the said letters patent, or anything therein contained, should not extend, nor should be construed to extend, to exclude or hinder the justices of the said late king, his heirs and successors, assigned or to be assigned to keep the said late king's peace within his county of Devon, or any of them, from executing the office aforesaid of a justice assigned to keep the said late king's peace within the town and parish of Tiverton aforesaid, in all things

Non intrumittant clause except in matters concerning the king's revenues.

and

and matters touching or concerning any revenues of our said late sovereign lord king George the First, his heirs and successors, or any of them. And further, our said late sovereign lord king George the First did will, and by his said letters patent, for himself, his heirs and successors, did grant to the said mayor and burgesses of the town and parish aforesaid, and to their successors, that it should and might be lawful for the mayor and recorder of the town and parish aforesaid for the time being, and for the said Oliver Peard during the time that the said N. Thorn should execute the office of mayor of the town and parish aforesaid as aforesaid, and every person who should execute the office of mayor of the said town and parish aforesaid during one whole year after he should depart from that office, or any two of them, in whom the mayor for the time being always should be one, in any convenient place within the town and parish aforesaid, to hold and keep a general sessions of the peace of our said late sovereign lord king George the First, his heirs and successors, for all things, matters, and offences happening, falling, or done within the said town and parish, and the liberties and precincts of the same, and to do and execute all things in the same sessions in as ample a manner and form as the justices of the peace of our said late sovereign lord king George the First, his heirs and successors, in his county of Devon, did or could do, or thereafter might do; yet notwithstanding, that they might not proceed to the determination of any petty treason, felony, or other offence whatsoever touching the loss of life or member within the town and parish aforesaid, without the special licence of our said late sovereign lord king George the First, his heirs and successors, as by the said letters patent, remaining of record in the court of Chancery of our lord the present king, at Westminster, in the county of Middlesex, more fully and at large appears; which said letters patent, soon after the granting thereof, to wit, on the fourth day of December, in the eleventh year of the reign of our said late king George the First, to wit, at the town and parish of Tiverton, in the county of Devon aforesaid, the then inhabitants of the said town and parish duly accepted, and by means thereof the inhabitants of the parish aforesaid became, and were, and ever since hitherto have been, and continued to be, and still are, a body corporate and politic, in deed, fact, and name, by the name of The Mayor and Burgesses of the Town and Parish of Tiverton, in the county of Devon. And the said Henry Finch, &c. in fact further say, that under and by virtue of the said letters patent, at the time of presenting the said indictment, there were, and from thence hitherto have been, and still are, a mayor, recorder, and capital burgesses of the said town and parish, and who has served the office of mayor of the said borough, and who for the time being have been, and have acted as justices of our lord the now king, assigned to keep the peace within the town and parish aforesaid, and also to hear and determine trespasses and other misdemeanors committed within the said town and parish, and the precincts and limits thereof; and who,

Averment that there has been and still is mayor, &c. and that since granting of letters patent have held sessions yearly,

under and by virtue of the letters patent, had full power and absolute authority to inquire, by the oaths of good and lawful men of the town and parish aforesaid, by whom the truth might be the best known, of the said offence in the said indictment mentioned. And the said Henry Finch, &c. in fact further say, that ever since the granting of the said letters patent hitherto, the mayor, recorder, or person who hath last served the office of mayor of the said town and parish, of whom the mayor of the said town and parish for the time being hath always been one for the time being, have yearly and every year held general sessions of the peace in and for the said town and parish, for hearing and determining trespasses and other misdemeanors committed within the said town and parish aforesaid; and this they the said Henry Finch, &c. are ready to verify: wherefore they pray judgment of the said indictment, and that the same may be quashed, &c. [See INDICTMENTS.] C. RUNNINGTON.

*Demurrer to
plea in abatement
to indictment.*

And sir James Burrow, knight, coroner and attorney of our sovereign lord the king, in the court of our said lord the king, before the king himself, for our said lord the king saith, that by reason of anything by the said Henry Finch, &c. above in pleading alledged, the said indictment ought not to be quashed, because he says that the said plea and the matters therein contained are not sufficient in law to quash the said indictment, to which said plea, in manner as the same is above pleaded, our said lord the king is not under any necessity, nor obliged by the law of the land in any manner to answer; and this he the said coroner and attorney of our said lord the king, for our said lord the king, is ready to verify: wherefore, for want of a sufficient plea in this behalf, our said lord the king prays judgment, and that the said Henry Finch, &c. may be convicted of the premises in the said indictment mentioned. [See DEMURRER TO PLEAS, and PROCEEDINGS IN CRIMINAL SUITS.] W. BALDWIN.

*Joinder in de-
murrer.*

And the said H. Finch, &c. say, that the said plea and the matters therein contained are sufficient in law to quash the said indictment, which said plea and the matters therein contained they the said H. Finch, &c. are ready to verify and prove in such manner as the court here shall direct: wherefore, inasmuch as the said coroner and attorney of our said lord the king, for our said lord the king, hath not answered the said plea, nor in any wise denied the same, the said Henry Finch, &c. pray judgment of the said indictment, and that the said indictment be quashed, &c.

*Plea in abate-
ment to the writ
(in trespass in
the C. B. against
seven defendants
after plea by two*

AND the said William, James, George, and John come in their proper persons, and pray judgment of the aforesaid writ, because they say that the aforesaid writ ought to have been sued out and prosecuted by the said Joseph in this behalf against them, by (not of guilty) by four others jointly of the want of proper additions.

the

the names and additions following: that is to say, James Jobbins, late of Knightsbridge, in the county of Middlesex, bricklayer; William Vaughan, late of the same place, labourer; George Stone, late of the same place, gardener; and John Carswel, late of the same place, cordwainer; and not in the same form in which it above appears to have issued against them; and this they are ready to verify: wherefore, for want of proper additions of degree and calling in this behalf, they pray judgment of the aforesaid writ, and that the same may be quashed. N. GROSZ.

And the said Joseph, as to the said plea of the said James, William, George, and John, by them above pleaded, says, that the said plea and the matters therein contained, in the manner and form as the same are above pleaded and set forth, are not sufficient in law to quash the aforesaid writ of him the said Joseph, nor is the said Joseph under any necessity or in any wise bound by the law of the land to answer thereto; and this he the said Joseph is ready to verify; wherefore he prays judgment, and that the said James, William, George, and John may answer over to the aforesaid declaration against them. And for causes of demurrer in law, he the said Joseph assigns and shews to the court here as follows, to wit, For that the said plea is pleaded by the said James, William, George, and John jointly; whereas the want of or imperfection of additions can only be pleaded by each of the defendants severally and distinctly, and as to his own particular addition without regard to the addition of any co-defendant: and for that the said James, William, George and John have not in and by the said plea averred or alleged the several and respective degrees and callings in the said plea mentioned and set forth: and for that the said James, William, George, and John have not in or by their said plea stated or set forth any defective or other original writ in this action or suit, nor is it in or by the said plea positively averred or alleged that the said several additions of degree and calling by the said plea supposed to be omitted are not contained in the writ of the said Joseph, though omitted in the declaration: and for that no issue can be taken: and for that the said plea is pleaded in abatement of the whole writ of the said Joseph in this action or suit, whereas it ought to have been pleaded in abatement thereof as to the said James, William, George, and John only: and for that the said plea is in other respects uncertain, insufficient, argumentative, and informal, &c. [See DEMURRER TO PLEAS.] THO. WALKER.

*Special Demur-
to the above plea,
that these de-
fendants ought
to have severd
in such plea;
that they have
not averred their
additions; they
have not set
forth a defective
writ, nor shewn
that the proper
additions are
there wanting;
that no issue can
be taken; that
it is pleaded in
abatement of the
whole writ;
whereas it
should have
been in abate-
ment of it as to
those defendants
only.*

And the said James, William, George, and John say that the said plea of them the said James, William, George, and John, and the matters therein contained, are sufficient in law to quash the aforesaid writ of the said Joseph; which said plea, and the matters therein contained, they the said James, William, George, and John are ready to verify and prove as the court shall direct, &c.: wherefore, since the said Joseph hath not denied or in any wise answered

*Joinder in de-
murrer.*

answered their aforesaid plea, but totally refused to admit the verifying, they the said James, William, George, and John, as before, pray judgment of the said writ, and that the same may be quashed.

N. GROSZ.

Plea in abatement of the writ by the seventh defendant, that his christian name is Nicholas, but that he is sued by the name of Peter.

AND Nicholas Osborne, impleaded by the name of Peter Osborne, in his proper person comes and defends the wrong and injury, when, &c. and saith that he was baptized by the name of Nicholas, to wit, at the parish of Carrick, in the county of Tipperary, in the kingdom of Ireland, and from his baptism hitherto has been always known by the name of Nicholas; without *that* that he the said Nicholas now is, or at the time of issuing the writ of the said Joseph was, or ever before had been, or ever since hath been, called or known by the christian name of Peter, as by the writ and declaration of the said Joseph is above supposed; and this he the said Nicholas is ready to verify; wherefore he prays judgment of the said writ, and that the same may be quashed, &c.

N. GROSZ.

Special demurrer thereto, because it appears on the record that he is declared against by the name of Nicholas; that defendant has changed the venue in his plea without necessity, and has given no venue where the issue may be tried; that he has not shewn any defect in the original writ, or that he was not properly named there; that he has improperly pleaded in abatement of the whole writ.

And the said Joseph, as to the said plea of the said Nicholas by him above pleaded, says, that the said plea and the matters therein contained, in manner and form as the same are above pleaded and set forth, are not sufficient in law to quash the aforesaid writ of him the said Joseph, nor is he the said Joseph under any necessity nor in any wise bound by the law of the land to answer thereto; and this the said Joseph is ready to verify; wherefore he prays judgment, and that the said Nicholas may answer over to his aforesaid declaration. And for causes of demurrer in law he the said Joseph assigns and shews to the court here as follows, to wit, For that the said Nicholas hath alledged in his said plea, that he hath been impleaded and declared against by the said Joseph in this suit by the christian name of Peter instead of Nicholas; whereas it appears by the said declaration, and by the record and proceedings before this court, that he hath been and is impleaded and declared against by the christian name of Nicholas, and that the said Nicholas hath in his said plea varied from the place and venue in the said declaration mentioned, without any absolute necessity for so doing: and for that the fact of the said Nicholas's baptism is alledged to have arisen in the kingdom of Ireland; whereas such fact should have been pleaded to have arisen at Knightsbridge, in the county of Middlesex, the venue mentioned in the declaration, in order that the same might be brought and fall within the cognizance of the jury here that might be impanelled to try such fact in case it was put in issue: and for that the said Nicholas hath not set forth in his said plea any defective or other original writ of the said Joseph in this suit, nor is it in or by the said plea avowed or stated positively that the said Nicholas is not so named in the writ of the said Joseph, or that such writ is against him by the name of Peter: and for that the said plea is pleaded in abatement of the whole writ of the said Joseph in this action

action or suit; whereas it ought to have been pleaded in abatement of the said writ as to the said Nicholas only: and for that the said plea is in various other respects uncertain, insufficient, argumentative, and informal, &c. [See DEMURRER TO PLEAS.]

THO. WALKER,

[Here follows a joinder in demurrer by the defendant Osborne similar to that by the other defendants.]

But because the justices here will advise amongst themselves before they give judgment upon the said several premises, so referred to their determination as aforesaid, a day, that is to say, Tuesday the 17th day of June 1785, is given to the said Joseph, and to the said James, William, George, John, and Nicholas, to hear such judgment, for that the said justices here are not yet advised thereof, &c.

Judgment that the defendant should answer over.

AND the said John Murray in his own proper person comes and prays judgment of the said bill, because he says that the said several promises and undertakings in the said declaration mentioned, if any such were made, were made by one W. H. one T. R. one H. W. one J. R. junior, one J. C. one J. L. one W. P. one A. D. one A. L. one W. B. one J. W. one W. R. &c. &c. (in number twenty-two) jointly with the said John Murray, and which said W. H. &c. &c. &c. were alive, and the said W. H. &c. &c. are, and each of them is still alive, to wit, at Westminster aforesaid: wherefore, because they are not, nor is either of them, named in the said bill, the said John Murray prays judgment of the said bill, and that the same may be quashed, &c.

EDWARD LAW.

And the said John Abraham Fisher and Robert Whitworth say, that the said bill of them, by reason of anything above by the said John Murray in pleading alledged, ought not to be quashed, because they say that the said several promises and undertakings in the said declaration mentioned were made, and each of them was made, by the said John Murray severally, as in the declaration aforesaid is above alledged, to wit, at London aforesaid, in the parish and ward aforesaid; and this they the said J. A. F. and R. W. pray may be inquired of by the country, &c. and the said John Murray doth the like; therefore let a jury come before our lord the king at Westminster, on, &c. by whom, &c. and who peither, &c. to recognize, &c. because as well, &c. the same day is given to the said parties, there, &c.

J. MORGAN.

And the said plaintiff, as to the said plea of the said defendant, says, that the said bill of them the said plaintiffs ought not, by reason of anything alledged in the said plea of the said defendant,

to

to be quashed, because he says, that the said several promises and undertakings in the said declaration mentioned, and each and every of them, was made by the said defendant alone, in manner and form as the said plaintiff hath above thereof complained against him; and this he prays may be inquired of by the country. [Similiter and issue].

T. BARROW.

Plea in abatement, that the promises were made by the defendant and his partners jointly, and not by him separately.

AND the said John Stockdale, by Thomas Yates his attorney, comes and defends the wrong and injury, when, &c. and prays judgment of the said bill of the said William, because he says, that at the time of the making the said several supposed promises and undertakings in the said declaration mentioned, he the said John Stockdale, one Edmund Dayrell, one Richard Weld, one John Morgan, one J. F. and one J. W. were partners in trade, and that the said promises and undertakings in the said declaration mentioned were made by the said J. S. jointly with them the said E. D. J. M. J. F. and J. W. and not separately by him the said J. S. and which said E. D. J. M. &c. &c. are still alive, to wit, at Westminster aforesaid, in the said county of Middlesex; and this he the said J. S. is ready to verify: wherefore, inasmuch as the said Edmund, Richard, &c. &c. are not named in the said bill, the said John Stockdale prays judgment of the said bill, and that the same may be quashed, &c.

Special demurrer, for that it ought to have been pleaded in law.

And the said William saith, that the said plea of the said John by him above pleaded, and the matters therein contained, are not sufficient in law to bar the said William from having and maintaining his aforesaid action against him the said John, to which said plea, in manner and form as the same is above pleaded, he the said William is not under any necessity, nor obliged by the law of the land, to answer; and this he is ready to verify: wherefore, for want of a sufficient plea in this behalf, the said William prays judgment, and his damages by reason of the premises to be adjudged to him, &c. *And for causes of this demurrer in law, the said William, according to the form of the statute in such case lately made and provided, shews to the court here these causes following: for that the said John, in and by his said plea, defends the wrong and injury, when, &c.:* and for that the said John concluded the said plea with the prayer that the said bill of the said William might be quashed, which is in the nature of a plea in abatement, whereas he ought to have concluded the said plea with a verification, and pray judgment if the said William ought to have his action against him the said John: and for that the said plea is in other respects informal and insufficient.

Joinder.

And the said John says, that the plea aforesaid, in manner and form aforesaid by him the said John above pleaded, and the matter in the same contained, are good and sufficient in law to quash the said bill of the said William, which said plea so pleaded, and the matter

matter therein contained, he the said John is ready to verify and prove, as the said court shall award: and because the said William hath not answered the said plea, nor hitherto in any manner denied the same, he the said John, as before, prays judgment of the said bill, and that the same may be quashed.

ff. AND the said J. D. and W. F. in their own persons, Plea of privilege come and defend the wrong and injury, &c. and say, that the court (a) of an attorney, a partner with another attorney, one of the K. B. the other C. P. here ought not to take, nor will take, cognizance of the plea aforesaid, because the said W. D. says, that he the said W. F. now is, and at the time of exhibiting the bill of the said John New against them the said J. D. (b) and W. F. and before, was, one of the attorneys of the court of our lord the now king, before the king himself here, to wit, at Westminster aforesaid, as by the roll of the attorneys of this court here fully appears, and that, as an attorney for many of the king's subjects, he is now prosecuting and defending divers suits and actions in the said court of our said lord the king, before the king himself here; and that he the said W. F. or any other attorney of this court, whilst he or they respectively are or is so prosecuting or defending any causes or suits in this court, by an antient and laudable custom used and approved in this court from time immemorial, ought not, nor ought any of them, contrary to their will, to be drawn into or compelled to answer any bill or bills to be exhibited against him or them, as in the custody of the marshal of the marshalsea of our lord the now king before the king himself, or in any other manner whatever, except by bill or bills to be exhibited in this court against him or them, as an attorney or attorneys of this court, in all pleas, complaints, and demands, which do not relate to his majesty's person (pleas relating to freeholds, felonies, and appeals, only excepted; and this he the said W. F. is ready to verify: wherefore he prays judgment if he ought to be compelled to answer to the said John New in the said plea in the said court here.

(a) You may either plead privilege with a *profer* of the writ, or with an *exemplification* of the record, or as this is pleaded.—Salk. 545. 1. Com. Dig. 3, 4. 2. Crompt. Praet.

(b) J. D. is an attorney of C. P.

As the above plea supposes the defendants to be practising attorneys at the time of commencing this suit, it perhaps

may be deemed necessary for the defendants to shew some act done by them as attorneys after the admission of Mr. D. and before the bringing of this action, suppose the plaintiffs should dispute it. Any act done in a cause (even writing a letter demanding a debt preparatory to an action brought) I think would be sufficient.

T. BARROW.

AND the said Joseph Ellyet, G. E. and Geo. Barnett, by Christopher Hall their attorney, come and say, that the said Richard Knapp ought not to be answered to his writ and declaration aforesaid, because they say, that after the making of a certain act

Plea in abatement that plaintiff is a popish recusant convict.

of

of parliament, made at the parliament begun and holden at Westminster, in the county of Middlesex, on the 17th day of March, in the first year of the reign of our sovereign lord George the First, late king of Great Britain, France, and Ireland, defender of the faith, and so forth, intituled, "An Act for the further Security of his Majesty's Person and Government, and the Succession of the Crown in the Heirs of the late Princess Sophia, being protestants, and for extinguishing the hopes of the pretended Prince of Wales, and his open and secret Abettors;" and before the day of obtaining the said original writ of the said Richard Knapp, that is to say, on the 6th day of October, in the year of our Lord 1745, at Warblington, in the said county of S. Richard New, esq. John Gringo, esq. and Samuel Marshall, esq. then three of the justices of our lord the now king, assigned to keep the peace in the county aforesaid, and also to hear and determine divers felonies, trespasses, and other misdeeds committed in the said county of S. and all of them, being of the quorum, by force and according to the form and effect of the said act of parliament, did tender unto the said Richard Knapp, whom they then and there did suspect to be dangerous and disaffected to his majesty and his government, the oaths in that act of (a) parliament mentioned, and by the same act appointed to be taken, for the said Richard Knapp to take the same, and then and there were ready and offered to administer the said oaths to the said Richard Knapp, according to the form and effect of the said act of parliament; nevertheless the said Richard Knapp, to whom the said oaths were so tendered, did then and there refuse to take the same, and did then and there neglect, and hath ever since hitherto neglected, to take the same; of which refusal the said Richard New, John Gringo, and Samuel Marshall, the justices aforesaid, afterwards, and before the obtaining the said original writ of the said Richard Knapp, that is to say, at the quarter sessions of the peace of our lord the present king of the said county of S. held next after the said refusal, that is to say, at the quarter sessions of the peace of the said county held on the 14th day of January in the said year of our Lord 1745, at the castle of Winchester, in and for the said county of S. before the right honourable John lord viscount Lymington, the reverend Benjamin Woodroffe, clerk, prebendary of Winchester, Thomas Bates, &c. and others their fellows, then justices of our said lord the now king, assigned to keep the peace of our said lord the king in the county of S. aforesaid, and also to hear and determine divers felonies, trespasses, and other misdeeds committed in the same county, did certify the said refusal of the said Richard Knapp in the court of that sessions of the peace, to be recorded in the rolls of that sessions, according to the form and effect of the said act of parliament; which said refusal was then and there recorded amongst the rolls of that sessions, as by the record thereof in the same court of sessions more fully appears, and from thence afterwards, and before the

(a) 1. Geo. 1. c. 13.

obtaining

obtaining the original writ of the said Richard Knapp, that is to say, on the 1st day of May A. D. 1750, the said refusal was certified by Morgan Keene, esq. then clerk of the peace of the county of Southampton aforesaid, into his majesty's court of chancery, held at Westminster, in the county of Middlesex, there to be recorded amongst the rolls of that court, in a roll in the said court of chancery provided and kept for that purpose only, which afterwards, and before the obtaining the original writ of the said Richard Knapp, that is to say, on the said 1st day of May in the year last aforesaid, was recorded amongst the rolls of the said court of chancery, in a roll in the said court of chancery provided and kept for that purpose only, according to the form and effect of the said act of parliament, as by the record thereof, in the same court of chancery at Westminster remaining, more fully appears (the tenor of which record is now produced here in court); whereby, and by force of the said act of parliament, the said Richard Knapp from the time of his refusal aforesaid became, and on the day of suing out the said original writ was, and yet is, a *popish recusant convict*, and as a popish recusant convict ought to be taken, esteemed, and adjudged; which said record of conviction is yet in full force and effect, not reversed nor annulled; and this they are ready to verify: wherefore they pray that the plea aforesaid may remain without day, until, &c.

D. POOLE.

AND the said plaintiffs, as to the said plea of the said defendant, by her secondly above pleaded in bar, says, *præcludi non*, because protesting, that the said plea, in manner and form as the same is above pleaded and set forth, and the matters therein contained, are insufficient in law to bar the said plaintiffs from having the said action against her; protesting also, that the said defendant was not married to nor under *coverture* of the said R. B. in the plea mentioned, in manner and form as the said defendant hath in her said plea in that behalf alledged: nevertheless, for replication in this behalf, the said plaintiffs say, that the said defendant, before the making of the said several promises and undertakings in the said declaration mentioned, and before the making of any or either of them, and before the several causes of action in the said declaration mentioned, or any or either of them accrued, that is to say, on, &c. at, &c. eloped from the said R. R. in the said plea mentioned, and that she hath from thence hitherto lived, and still doth live, separate and apart from the said R. R. and that they the said plaintiffs did and performed the work and labour in the declaration mentioned for the said defendant, and at her request and on her credit only, and sold the goods and merchandizes in the said declaration mentioned to the said defendant, and at her request and on her credit only, and that they laid out, expended, and paid the money in the last count of the said declaration mentioned for the said defendant, and

Replication to a plea of *coverture* in abatement, protesting as to the sufficiency of the plea; protesting also, that the defendant is not a *feme covert*. Replication, that before the cause of action accrued, the defendant had eloped from her husband, and that the work, &c. was done for the defendant at her request, and on her credit only.

and at her request and on her credit only, to wit, &c. ; and this, &c. : wherefore, &c.

Plea in abatement of the bill in B. R. of misnomer in defendant's surname.

AND John Seabrook, against whom the said Edward by his bill exhibited complains, by the name of John Seabrook, by *James Hodgson (a) his attorney*, comes and defends the wrong and injury, &c. and prays judgment of the bill aforesaid, because he says, that he is named and called by the name of John Seabrook, and by the said name of John Seabrook from the time of his baptism hitherto hath been called and known; without this, that the said John Seabrook now is or ever was called or known by the name of John Seabrook, as by the said bill is above supposed; and this he is ready to verify: wherefore he prays judgment of the said bill, and that the same may be quashed.

(a) There must be a special warrant of attorney for this, Lat. 11. 1. Com. Dig. 70. for regularly defendant ought to appear and plead in person in such case.

I am of opinion, that the misnomer in this case is pleadable in abatement of the bill, the name of the defendant being Sea-

brook; but, both in the declaration and on the back of it, it is plainly wrote Seabrook, which is a material variance both in letter and sound. There must be an affidavit of the truth of the plea annexed to it, according to the statute 4. Anne, c. 16. before it is delivered.

T. BARROW.

Plea of privilege by an attorney sued by assignees of a bail-bond given by him, proceeded against as a common person.

AND the said William, in his own proper person, comes and defends the wrong and injury, and says, that he ought not to be compelled to answer to the said bill of the said plaintiffs, assignees as aforesaid, because he says, that he now is, and on the day of exhibiting the said bill of the said plaintiffs, assignees as aforesaid, and long before was, one of the attorneys of the said court of our lord the king himself here attending in the same court, and that in the same court there is, and from time whereof the memory of man is not to the contrary there hath been, a certain antient and laudable custom used and approved of in the same court, that is to say, that no attorney of the same court, against his will, hath been sued nor ought to be sued in any personal action in this court, otherwise than by bill exhibited against him as an attorney of this court present here in court: and the said William further says, that the said bill exhibited against him by the said plaintiffs, assignees as aforesaid, in this suit is exhibited against him contrary to the said custom as a prisoner in the custody of the marshal of the marshalsea of our sovereign lord the king before the king himself, and not against him as an attorney of this court present here in court; and this the said William is ready to verify: wherefore, since the said William now is sued, on the day of exhibiting the said bill of the said plaintiffs assignees as aforesaid, and long before, was an attorney of this court present here in court in his own proper person, he prays judgment, and that

that his privilege as such attorney may be allowed him, and that he may *not* be compelled to answer to the said bill. H. RUSSELL.

It appears by the case of *How v. Bridgwater*, Barnes, 117. that an attorney by entering into a bail bond *waives his privilege (a)* : wherefore, and as it is shewn on the face of the record by the declaration in this cause, that defendant has entered into a bail bond (for he is sued upon it), the Court must take notice that his plea is a nullity : I am of opinion that his plea is bad upon demurrer. In demurrer to a plea in abatement

plaintiff *will not be entitled to costs (b)* ; but as the defendant (an attorney) is an officer of the court, I incline to think the Court would entertain a motion for him to shew cause why the plea should not be set aside, and he pay the costs of the application, for having first acted contrary to one of its known rules, in becoming bail, and afterwards attempting to take the advantage of his conduct.

T. BARROW.

(a) *Quære*, If he loses his privilege when sued in the same court ?

(b) Mr. Baldwin, before whom this was laid, being of opinion, that though plaintiff would not have his costs of this

demurrer immediately, yet if he ultimately succeeded, the master would allow them in the general costs of the action, for that cause demurred generally.

AND the said W. C. in his own proper person comes and defends the wrong and injury, when, &c. and prays judgment of the bill aforesaid, because he says, that the said several promises and undertakings in the said bill mentioned, if any such were or was made, were, and each of them was, made as well by one C. N. and one W. H. as by the said William C. jointly, and not by the said William C. solely and separately, to wit, at Westminster aforesaid, in the county aforesaid, and that the said C. N. and W. C. at the time of the exhibiting the bill of the said B. D. against him the said William C. were and still are living and in full life, to wit, at Westminster aforesaid, in the county aforesaid ; and this the said William C. is ready to verify : wherefore, inasmuch as the said C. N. and W. K. are not named in the bill aforesaid, he the said William C. prays judgment, and that the said bill may be quashed.

Plea in abatement, that one C. N. and one W. K. promised jointly with defendant, and that defendant did not promise.

And the said B. says, that the said bill, by reason of anything by the said William C. above in pleading alledged, ought not to be quashed, because he says, that the said several promises and undertakings in the said bill mentioned were not, nor was either of them, made as well by the said C. N. and W. K. as by the said W. C. jointly, but that the same were, and each of them was, made by the said W. C. solely, in manner and form as by the said bill is above alledged ; and this the said B. prays may be inquired of by the country, and the said W. C. doth the like ; therefore, &c.

Replication and issue.

The plaintiff must not only prove the separate liability of the defendant C. but also the amount of his demand as the

quantum of damages to be found by the jury.

Plea in abatement, that defendant's christian name is *Thomas*, and not *John*.

AND *Thomas B.* against whom the said *B.* hath exhibited his said bill by the name of *John B.* in his own person comes and says, that he was baptized by the christian name of *Thomas*, and by that christian name now is, and from the time of his baptism hitherto hath been, called and known, to wit, at *A. &c.*; without this, that he the said *Thomas* at the time of the commencement of this action, or at any time before or since, hath been or now is called or known by the christian name of *John*, as by the said bill is above supposed; and this he is ready to verify: wherefore he prays judgment of the said bill, and that the same might be quashed, &c.

Trinity Term, 32. Geo. III.

Witness *Lloyd Lord Kenyon*,
Stormont and Way.

Warrants

of

Attorney.

LONDON *ff.* *Jonathan J.* puts in his place *A. F.* his attorney, against *William H.* in a plea of trespass upon the case.

LONDON *ff.* The said *William* appears in his own proper person, at the suit of the said *Jonathan* in the plea aforesaid.

Memorandum.

LONDON *ff.* Be it remembered, that on Friday next after the morrow of the Holy Trinity in this said Term, before our lord the king at Westminster, comes *Jonathan J.* by *A. F.* his attorney, and brings into the court of our said lord the king before the king himself now here, his certain bill against *William H.* being in the custody of our lord the now king before the king himself, of a plea of trespass upon the case, and there are pledges for the prosecution thereof, to wit, *John Doe* and *Richard Roe*, which said bill follows in those words, to wit [Here enter the declaration, the plea in abatement, and the demurrer thereto, *verbatim*].

Joinder in demurrer to a plea in abatement *dicta datus.*

Judgment default.

And hereupon the said *Jonathan* prays the court of our said lord the king now here, that the said *William* may join in demurrer, and thereupon a day is given to the said *William* before our said lord the king at Westminster, until Wednesday next after eight days of the Holy Trinity, to join in demurrer, &c. and the same day is given to the said *Jonathan*, at the same place; at which day before our said lord the king, comes the said *Jonathan* by his said attorney; and the said *William* (although solemnly required) comes not, but makes default *(a)*: wherefore it is considered by the Court, that the said *William* do further answer to the bill of the said *Jonathan*, upon Wednesday next after three weeks from the day of the Holy Trinity; the same day is given to the said *Jonathan* here, &c.; at which day, before our said lord the king at Westminster, comes the said *Jonathan* by his said attorney, and the said *William* comes not, nor doth he say any thing in bar or preclusion of the said action; for which reason, the said *Jonathan* ought to

(a) Lill. 492.

recover against the said William his damages by occasion of the non-performance of the said several promises and undertakings in the said bill specified; but because it is unknown, &c. &c. &c. [in the usual form of judgment by default in assumpsit].

In the Exchequer of Pleas.

AND the said James, in his own proper person, comes and defends the wrong and injury, when, &c. and as to so much of the declaration aforesaid as relates to the sum of 19l. 10s. in the first count thereof mentioned, and parcel of the money above demanded, the said James prays judgment thereof, and that the same may be quashed, because he says, that after the recovery of the judgment in the said first count specified, and before the commencement of this action, to wit, on the 28th day of November A. D. 1788, the said James, for reversing the said judgment duly prosecuted out of the court of chancery of the said lord the king, at Westminster aforesaid, a certain writ of the said lord the king, for correcting error in the record and process, and also in the giving of the said judgment, directed to Lloyd lord Kenyon, then and yet chief justice of the said lord the king appointed to hold pleas before the king himself, whereby it was commanded to the said chief justice, that if judgment was given thereupon, then he should cause the record and process aforesaid, with all things touching the same, to come before his said majesty's justices of the common bench and the barons of his exchequer, in his exchequer chamber, at a certain day in the said writ specified, that the said justices and barons, viewing and examining the record and process aforesaid, might cause further to be done thereupon for amending the said error as of right, and according to the form of the statute, &c. should be meet to be done; which said writ of error afterwards, and before the commencement of this action, to wit, on the 27th day of January in the year 1789, at Westminster aforesaid, being then and there delivered to the said chief justice, was by him in due manner returned to the said justices of the common bench and barons, with the record and process aforesaid to the writ annexed, whereof the said John afterwards, and before the commencement of this action, to wit, on the day and year last aforesaid, had notice; and the said James further says, that the said writ for correcting error is still depending undetermined and in full force, and that the judgment aforesaid is not yet either affirmed or reversed; and this the said James is ready to verify: wherefore, as to so much of the declaration aforesaid as relates to the sum of 19l. 10s. in the first count thereof mentioned, the said James prays judgment thereof, and that the same may be quashed, &c.; and as to so much of the declaration aforesaid as relates to the sum of 10l. in the second count thereof mentioned, and residue of the money above demanded, the said James says, that he does not owe to the said John the said sum of 10l. in the said count mentioned, or any part thereof, in manner and

Plea in abatement to the first count in the declaration, a writ of error pending; to the second count nil debet.

D

form

form as the said John hath therein complained against him ; and of this he puts himself upon the country, &c.

Opinion. Although I have drawn a plea of the pendency of the writ of error in abatement according to my instructions, I am of opinion, that such a plea is not maintainable either in abatement or in bar. Vide 3. Bac. Abr. 212. and the cases there referred to. The plaintiff must however demur to it, and the defendant, after a judgment against him on

demurrer to his plea, will still have an opportunity of pleading *again in chief* ; but I shou'd think it cannot be worth the defendant's while to purchase the time this plea may gain him at the necessary expence. There must be an affidavit annexed to the plea (if filed) that it is true in substance and matter of fact.

Plea in abatement to an indictment, that the defendant was *conversant* in the parish of St. M. and not in the parish of A. as is supposed by the indictment.

AND now, to wit, on Wednesday next after fifteen days of Easter in this same Term, in the court of our said lord the king before the king himself here, to wit, at Westminster, in the county of Middlesex, P. P. of the parish of St. Martin in the Fields, in the said county, refiner, who, by virtue of the writ of our said lord the king, is had here to answer our said lord the king of the premises contained in the indictment aforesaid, and thereby above alledged against him the said P. P. in his proper person, and having heard the said indictment read, he the said P. P. saith, that he ought not to be compelled to give any answer thereto, because protesting that the said indictment is insufficient in law ; for plea in this behalf he the said P. P. saith, that he the said P. P. before and at the time of the taking of the inquisition aforesaid, and of finding the said indictment against him the said P. P. was, and from thence hitherto hath been, and still is, (a) *conversant* in the said parish of St. Martin in the Fields, in the said county of Middlesex, and he the said P. P. at the time of the taking the said inquisition, and of finding the said indictment against him the said P. P. or at any time before or afterwards hitherto, was not, nor was, nor hath he been, *conversant* in the parish of St. Margaret, Westminster, in the said county of Middlesex, as by the said indictment is above supposed ; and this he the said P. P. is ready to verify : wherefore, inasmuch as in the said indictment addition is not made of the place of the which he, the said P. P. at the time of the taking the said inquisition, and of finding the said indictment, was, and still is, and in which he then was, and still is, *conversant*, according to the form of the statute of Addition in Indictments, in which the exigent may be awarded, he the said P. P. prays judgment of the said indictment, and that the same may be quashed, &c.

I am not certain whether it is necessary to accompany this plea with an affidavit of its truth ; but if there be the least doubt about it at the office, I would make such affidavit ; and more especially so, as the statute 4. Anne, c. 16. s. 11. makes no exception in favour of indictments, but requires an affidavit of the truth of every dilatory plea in every court of re-

cord. The affidavit is the usual one, that the plea hereto annexed is true in substance and matter of fact.

V. LAWES.

(a) The place where defendant is *conversant* is sufficient, though not *conversant* nor inhabitant. Barnes, 162. Com. Dig. tit. Abatement, F.

AND

AND the said defendant, by G. B. his attorney, comes and defends the wrong and injury, when, &c. and prays judgment of the said bill, because he says, that in the Term of Easter last, before our lord the king at Westminster, came the said plaintiff, by G. G. his attorney, and as well for our said lord the king as for himself, exhibited in the said court of our said lord the king before the king himself here, to wit, at Westminster aforesaid, his certain bill against the said *Richard*, by the name of William Henbrow, being in the custody of, &c. of a plea of debt, and found pledges of prosecution, to wit, John Doe and R. Roe, and by the said bill the said John complained against the said *Richard* by the name of *William Henbrow*, being, &c. of a plea, &c. which he owed, &c. [here recite the declaration to the end] as by the record thereof now here in the court of our said lord the king before the king himself at Westminster remaining, more fully appears, which said recited bill of the said plaintiff, who as well, &c. by him exhibited in the said court of our said lord the king before the king himself, in Easter Term as aforesaid, at the time of the commencement of this suit remained, and was wholly undetermined, no wise discontinued, quashed or annulled; and the said defendant further says, that the 600 sheep and the 40 oxen, and the selling thereof in the present bill first above mentioned, are the same sheep, oxen, and selling, and not other and different, and that the said 600 sheep and 40 oxen, and the offering to sale thereof, in the second count of the bill of the said plaintiff by him exhibited in Easter Term as aforesaid mentioned, and the said 600 sheep and 40 oxen, and the offering to sale thereof, in the second count of this present bill mentioned, are the same sheep, oxen, and offering to sale, and not other or different, and that the said 600 sheep and 40 oxen, and the expouing to sale thereof, &c. &c. [going through all the counts in the above manner]; and the said defendant further says, that the said person against whom the said plaintiff exhibited his said bill by the name of *William H.* in Easter Term as aforesaid, and the said *Richard*, against whom this present bill of the said plaintiff is exhibited, is the said *Richard* the now defendant, and are one and the same person, and not other and different persons: wherefore, &c. of this present bill of the said plaintiff, and that *that* bill may be quashed. [Affidavit as usual.]

Plea in abatement to declaration *qui tenet* on the statute of 15. Charles II. c. 8. against a butcher for selling live cattle, another action pending at plaintiff's suit for the same offence.

AND he against whom the said plaintiff hath exhibited his said bill by the name of Daniel Stover, in his own proper person comes and (a) defends the wrong and injury, &c. and pleads, that he was baptized by the name of *Charles*, to wit, at, &c. aforesaid, and by the name of *Charles* hath always since his baptism hitherto been called and known; without this, that he the said defendant now is, or at the time of the exhibiting the bill of the said plaintiff was, or ever before had been, called or known by the Christian name of

Plea to the person of a misnomer in the defendant's Christian name.

(a) A plea of misnomer must be without defence, vide Black. Com. 298.—See contra, Com. Dig. tit. Abatement, I. 16.

See Hixon v. Daniel, as in and by his said bill is above supposed; and this he is ready to verify: wherefore he prays judgment of the said bill, and that the same may be quashed, &c.

Replication to the above plea, that the defendant is called and known as well by one name as the other.

S.P. Imp. Praet. B. R. 252.

And the said plaintiff saith, that his said declaration ought not to be quashed by reason of anything in the said plea above alledged, because he saith, that the said Charles Stover, who now appears to the bill and declaration of him the said plaintiff, is the same person against whom the said plaintiff brought his said bill; and that he the said Charles Stover long before, and at the time of exhibiting, &c. was, and still is, called and known as well by the name of Daniel Stover as by the said name of Charles Stover; and this he the said plaintiff prays may be enquired of by the country; and the said Charles doth the like, &c.; wherefore, &c.

Plea to the person, that defendant is of another addition than that by which he is sued.

As to the propriety of this alteration, see Cpm. Dig. tit. "Abatement" I. 16.

Co. Lit. 127. b.

Hixon v. Binns, 3. Term Rep. 185.

AND W. H. of London, merchant, against whom the said plaintiff hath obtained his original writ in this cause, by the name of W. H. late of London, broker, in his own person comes and defends the wrong and injury, &c. and prays judgment of the aforesaid writ of the said plaintiff, because he saith, that he the said W. H. on the day of obtaining the aforesaid original writ, and long before, was, and from thence hitherto hath been, and still is, a merchant; and that he the said defendant, on the said day of obtaining the said original writ, was not, nor at any time either before or afterwards hitherto has been, a broker, as by the said writ is above supposed; and this, &c.; wherefore, inasmuch as the said W. H. is not named of the very mystery of which he really is, according to the form of the statute of Additions of Surnames and Names in Writs in which process of outlawry lies, lately made and provided, the said defendant prays judgment, and that, &c.

S. URLIN,

Replication to the last plea, that defendant was a broker, as, &c.

And the said plaintiff saith, that for the occasion before alledged the said original writ of the said plaintiff ought not to be quashed, because he saith, that the said defendant, on the day of obtaining the said original writ, was, and before then had been, a broker, as by the said writ is above supposed, to wit, at, &c. aforesaid; and this he prays may be enquired of by the country, &c.

Plea to the jurisdiction of privilege by an attorney of the common pleas to an action brought against him in the king's bench.

AND the said defendant in his own proper person comes and defends the wrong and injury when, &c. (a); and says, that this court here ought not to take, nor will take, cognizance of the plea aforesaid, because he saith, that he the said defendant long before, and at the time of the exhibiting of the bill of the said plaintiff was, and from thence hitherto hath been, and still is, one of the

(a) Vide Black. Com. 3d vol. 298. Co. Lit. 117. Salk. 217. Ld. Raym. 282. with respect to the making full de-

fence in the pleas to the jurisdiction of the court.

attornies

attornies of the court of our lord the king of the bench, to wit, at Westminster, in the county of Middlesex, aforesaid; and that he the said defendant, during all the time aforesaid, hath prosecuted and defended, and still doth prosecute and defend, divers pleas and suits in the said court of the bench at Westminster aforesaid, for many true and faithful subjects of our said lord the king, as their attorney; and the said defendant further saith, that he, and all other the attornies of the said court of the bench prosecuting and defending suits and pleas for their clients in the said court of the bench, ought, by an antient and laudable custom, from time immemorial used and approved of, according to the laws and customs of this realm, and the liberties and privileges of the said court of the bench, to be free and exempt from being compelled against their wills, and have not, nor hath any or either of them, at any time or times whatsoever hitherto, been used and accustomed to be compelled to answer any plea or plaint in any action personal (pleas of freehold, felony, and appeals only excepted), before any justices or ministers of our lord the king, or other judge whomsoever, in any court whatsoever, except before the justices of our lord the king of the court of the bench at Westminster aforesaid, by bill filed in the said court against such attorney or attornies as present here in court; and this he is ready to verify: wherefore he prays judgment if he ought to be compelled to answer to the said plaintiff in the said plea in the said court here, &c.

See postea, §

Vide Ld. Raym. 63.

AND the said plaintiff says, that he the said defendant, notwithstanding anything by the said defendant in his said plea alledged, ought to answer to the said bill of the said plaintiff in the court here, because he saith, that he the said plaintiff long before, and at the time of suing out the writ of attachment of privilege hereinafter mentioned was, and continually since hath been, and yet is, one of the attornies of the court of our lord the king, before the king himself here, to wit, at Westminster aforesaid; and being so an attorney as aforesaid, he the said plaintiff, before the day of exhibiting his said bill against the said defendant, to wit, on the twenty-eighth day of November, in the twentieth year of the reign of our sovereign lord the now king, according to the liberties and privileges for such attornies of the same court from time immemorial used and approved in the same court, sued and prosecuted out of the court of our said lord the king, before the king himself here, to wit, at Westminster, a certain writ of our said lord the king of attachment of privilege against the said defendant, directed to the then sheriff of Middlesex, by which said writ the said lord the king commanded the then sheriff of Middlesex aforesaid that he should attach the said defendant and John Doe, if they might be found in his bailiwick, and safely keep them, so that he might have their bodies before our said lord the king here, to wit, on the next after then next following, to answer to the said plaintiff, one of the attornies of the court of the said lord the king, before

Replication to a plea like the last, viz. that the plaintiff is an attorney of B.R. and as such impleaded the defendant in the king's bench by attachment of privilege.

the king himself here, to wit, at Westminster aforesaid, according to the liberties and privileges of the same court for such attornies time out of mind used and approved of in the same court, in a plea of trespass, and also to a bill of the said plaintiff against the said defendant for forty pounds upon promises, according to the custom of the said court of the said lord the king, before the king himself to be exhibited, and that he should have there then that writ; at which day, before our lord the king at Westminster, came the said plaintiff in his proper person, and the said defendant in his proper person also appeared in the same court here to answer to the said plaintiff according to the exigency of the said writ; and the then sheriff, to wit, J. W. esquire, and R. A. esquire, returned to the said court of our said lord the king, before the king himself here, to wit, at Westminster aforesaid, that by virtue of the said writ he had taken the body of the said defendant, and had his body ready before the said lord the king at Westminster at that day, as by the said writ the said sheriff was required, as by the record thereof remaining in the said court of our said lord the king, before the king himself here, to wit, at Westminster aforesaid, manifestly appears: and the said plaintiff further says, that the said writ of attachment of privilege, prosecuted as aforesaid by the said plaintiff, was prosecuted by him the said plaintiff, as to the said defendant, with intent to implead the said defendant for the causes of action in the said declaration above specified, and to cause him to appear in the said court here, and upon his said appearance to declare against him for the several causes of action above mentioned, according to the course and custom of the said court; and the said plaintiff, according to such his intention, afterwards, to wit, in Hilary term, in the twentieth year aforesaid, declared by bill against the said defendant, in manner and form aforesaid; and this, &c.; wherefore, &c.; and that the said defendant may answer to the said bill of the said plaintiff, &c.

D. POOLE.

Plea to the jurisdiction.

Privilege of an attorney of B.R. pleaded to an action brought against him in that court as a common person.

AND the said defendant in his own person comes and (*defends the wrong and injury, &c. and says, that the court here ought not to take nor will take cognizance of the plea aforesaid, because he*) says, that he the said defendant now is, and at the time of exhibiting of the bill of the said plaintiff against him the said defendant, and long before, was one of the attornies of the court of our lord the now king, before the king himself here, to wit, at Westminster aforesaid, as by the roll of the attornies of this court here fully appears, and that as an attorney for many of the king's subjects he is now prosecuting and defending divers suits and actions in the said court of our said lord the king, before the king himself here, and that he the said defendant, or any other attorney of this court, whilst he or they respectively are or is so prosecuting or defending any causes or suits in this court, by an antient and laudable custom, used and approved in the said court from time immemorial, ought not, nor ought any of them, contrary to their will to be drawn into or compelled to answer

answer any bill or bills to be exhibited against him or them as in the custody of the marshal of the marshallea of our lord the now king, before the king himself, or in any other manner whatsoever, except by bill or bills to be exhibited in this court against him or them as an attorney or attornies of this court, in all pleas, plaints, and demands, which do not relate to his majesty's person (pleas relating to freeholds, felonies, and appeals, only excepted); and this he is ready to verify, *and therefore apprehends, that the court here will not nor ought to take cognizance of the action aforesaid here depending against him, &c.*: wherefore he prays judgment if he ought to be compelled to answer to the said plaintiff in his said plea in the said court here.

W. DAVY.

Quere, If this plea will not be more properly pleaded by making the alterations in Italc. Vide 3. Black. Com. 298. Co. Lit. 127. Salk. 217. Ld. Ray. 232.

should conclude to the record, and not to the country, for no one can be an attorney but by the act of the court, which must be entered on record; and the Court will not suffer a jury to enquire into their own act. 1. Stra. 76.

II. B. A replication to the above plea

AND one William Lee, gent. against whom the said plaintiff hath exhibited his bill as one of the attornies of this court here, in his proper person comes and defends the wrong and injury when, &c. and prays judgment of the said bill, because he says, that the said defendant is not, nor ever was, one of the attornies of the court of our lord the king, before the king himself at Westminster aforesaid, as he the said plaintiff hath above supposed; and this he the said defendant is ready to verify: wherefore he prays judgment of the said bill, and that the same may be quashed, &c.

Plea in abatement of the person, that defendant is not an attorney, as alleged in the bill.

S. P. Imp. Pr. B. R. 231.

W. WHITAKER.

AND the said Mary, in her proper person, comes and prays judgment of the bill aforesaid, because she says, that she now is, and before the day of exhibiting the bill of the said plaintiff was, and ever since hath been, covert of one William Mand, then and still being her husband, to wit, at, &c. aforesaid, which said William Mand is now living and in full life, to wit, at, &c. aforesaid; and this she is ready to verify: wherefore she prays judgment of the said bill prosecuted against the said Mary as a feme sole in the manner aforesaid, and that the said bill may be quashed, &c.

Plea in abatement of the person of defendant's coverture,

Coverture ought to be pleaded in abatement, not in bar, 1. Lutw. 22.

Drawn by MR. WARREN.

In the king's bench—Affidavit of truth of plea.

Mary Mand, of, &c. married woman, the defendant above named, maketh oath, and saith, that the plea hereto annexed is true in substance, in matter of fact.

Sworn, &c.

MARY MAND.

AND

Coverture of the
defendant plead-
ed in bar

AND the said Anne, in her own person, comes and defends the wrong and injury when, &c. and says, that the said plaintiff ought not to have or maintain his aforesaid action against her, because she saith, that she the said defendant, before and at the time of the making the said several promises and undertakings in the said declaration mentioned *was, and from thence hitherto hath been, and still is*, the wife of, and married to, one John Smith (*since deceased*), and which said John Smith is now living, to wit, at, &c. ; and this, &c.: wherefore, &c. if, &c.

Drawn by Mr. WARREN.

Plea in bar, that
the plaintiff *ne
unques accomple in
sola matrim.*
pleaded to an
action of trespass
vi et armis in
bar.

AND the said Joseph and Sarah, by Richard Kelsall their attorney, come and defend the force and injury when, &c. and say, that the said plaintiffs ought not to have or maintain their aforesaid action against them, because protesting, that the said Sarah is not guilty of the said trespasses and assaults in the said declaration mentioned, or of either of them, in manner and form as the said plaintiffs hath above thereof complained against them the said defendants ; for plea in this behalf they the said Joseph and Sarah say, that the said Edward and Ann were never coupled or joined together in lawful matrimony ; and this the said defendants are ready to verify : wherefore they pray judgment if the said Edward and Anne ought to have or maintain their aforesaid action against them, &c.

Drawn by V. LAWES.

Plea to the per-
son of the plain-
tiff that he is an
alien born and an
enemy.

S. P. 1. Mod.
Ent. 9.
1. Litt. Ent. 1.

AND the said defendant, by A. B. his attorney, comes and defends the wrong and injury, &c. and saith, that the said plaintiff is an alien born, to wit, at Clera, under the allegiance of the French king, an adversary of our lord the now king, and of parents adhering to his said adversary ; and the said plaintiff entered into this kingdom without the safe-conduct of the said lord the now king ; and this he the said defendant is ready to verify, where, when, and as the Court shall award : wherefore he prays judgment if the said plaintiff ought to be answered to his said bill, &c. [Annex affidavit of where the plaintiff was born, and that he was not naturalized to the defendant's knowledge.] R. DRAPER.

Vide Morg. Dig. 38, &c. 2. Stra. 1082. Co. Lit. 129. Salk. 46. 1. Mod. pt. 27.

Replication to
the above plea,
that the plaintiff
resided in these
kingdoms in
time of peace,
and still resides,
under the pro-
tection and li-
cence of our lord
the king.

And the said plaintiff, notwithstanding anything above pleaded by the said defendant, says, that he the said plaintiff ought to be answered to his said bill, because he saith, that long before a war was proclaimed between the said French king and our said lord the now king, and in time of peace between the said kings, to wit, on the first of July 1727, the said plaintiff was and resided in this kingdom of Great Britain, to wit, at Westminster aforesaid, and continually ever since, and at the time of the making of the said promissory note and the said several promises in his said declaration mentioned,
and

and at the time of exhibiting his said bill, remained and resided, and now doth remain and reside, in this kingdom of Great Britain, by the licence and under the protection of our said lord the now king of Great Britain, to wit, at Westminster aforesaid; and this, &c.: wherefore, &c. and that the said defendant may answer his bill and declaration, &c.

S. S. SMYTHE.

Vide 1. Bac. Ab. 34. Morg. Dig. 38, &c. Ld. Raym. 283. 353. 2. Stra. 1082, 301. 46. Farreley, 150.

AND the said Sarah Hill, the daughter and heir of the said William Pritchard in the said bill above mentioned, by W. E. her guardian, comes and saith, that she the said Sarah is within the age of twenty-one years, to wit, of the age of twenty years and eight months, and no more, to wit, at, &c. aforesaid; and this, &c.: wherefore she conceives that she during her minority ought not to be compelled to answer the said plaintiff in this plea aforesaid, and prays that the said plea may stay and be respited until the full age of her the said S. H. &c.

Plea in abatement (by defendant sued as heir) of *infra etatem*.

T. SEWELL.

AND the said Sarah Periam, by Anne P. her guardian (who is admitted by the court of our lord the king, before the king himself here, to defend for the said Sarah, being an infant under the age of twenty-one years), comes and defends the wrong and injury when, &c. and the aforesaid Sarah saith, that she is within the age of twenty-one years, to wit, of the age of twenty years and six months, and no more; and this she is ready to verify: wherefore she doth not intend that she, during her aforesaid minority, will be compelled to answer the said plaintiff of the debt aforesaid, and prays that the aforesaid plea may from henceforth remain until the said Mary be of full age, &c.

Another plea like the last to debt on bond, and an heir of obligor. Parol demurr, defendant being under age. H. T. 32. 92.

And because the said plaintiff doth not deny the said plea of the said Sarah, therefore let the plea of the said plaintiff, and all proceedings thereon, be stayed until the full age of the said Sarah, &c.

Replication to the above plea,

AND the said defendant, by R. B. his attorney, comes and defends the wrong and injury, &c. and prays judgment of the plaintiff [or writ aforesaid], and the declaration thereon founded, and pleads that he, together with one J. G. of, &c. on, &c. to wit, at, &c. became jointly bound to the said plaintiff by the said writing obligatory in the said declaration mentioned in the sum of, &c. to be paid to the said plaintiff when they the said defendant and J. G. should be thereto afterwards requested, and that the said J. G. as well as the said defendant, signed, sealed, and delivered the said writing obligatory (as by the said writing obligatory sealed with the respective

Abatement of the writ and count in debt on bond, that two were jointly bound, and only one sued,

spective seals of the said defendant and J. G. and now brought here into court, the date whereof is the day and year in that behalf abovementioned) more fully and at large appears); and the said defendant further saith, that he did not bind himself to the said plaintiff by the said writing obligatory without the said J. G. but that they the said defendant and J. G. bound themselves jointly and not severally by the said writing obligatory, and that the said J. G. is still living and in full life, to wit, at, &c. aforesaid; and this he the said (defendant) is ready to verify: wherefore, inasmuch as the said J. G. is not named in *the said plaint (or writ)*, nor in the declaration thereon founded, he the said defendant prays judgment, and that the said plaint (or writ), and the declaration thereon founded, may be quashed, &c.

Abatement of an action of *assumpsit* in B. R. declared against one only on a PARTNERSHIP debt.

S. P. Imp. Prac. 232.

AND the said defendant, in his own person, comes and defends the wrong and injury, &c. and prays judgment of the bill (*or writ*) aforesaid, because he saith, that the said several promises and undertakings in the said bill mentioned, if any such were or was made, were, and each of them was, made as well by one A. E. as by the said defendant, jointly, and not by the said defendant separately and solely, to wit, at, &c. aforesaid; and that the said A. E. at the time of the exhibiting of the said bill of the said plaintiff against the said defendant was, and still is, living and in full life, to wit, at, &c. aforesaid; and this, &c.: wherefore, inasmuch as the said R. E. is not named in the bill aforesaid, he the said defendant prays judgment, and that the same bill may be quashed, &c.

Plea of a former suit depending for the same cause of action in the same court.

AND the said defendant, in his own proper person, comes and defends the wrong and injury, &c. and prays judgment of the said bill, because he says, that the said bill was exhibited in this court here on Thursday next after five weeks of Easter, in this same Term, and not before, and that heretofore, to wit, in this same Easter Term, in the same twenty-first year of the reign of our sovereign lord the now king, in this court of our lord the king, before the king himself here (the said court then and still being held at Westminster, in the county of Middlesex), he the said plaintiff exhibited his certain other bill against him the said defendant in a certain plea of trespass on the case on promises, for the non-performance of the very same promises and undertakings above mentioned, then and there complaining by the said bill against the said defendant in that plea; for that whereas [here set out the declaration *verbatim* till you come to the conclusion]: nevertheless the said defendant, in no wise regarding his said several promises and undertakings in form aforesaid made, but contriving, &c. to deceive, &c. the said plaintiff in that behalf, hath not paid the said several sums of money, nor either of them, nor any part thereof (although, &c.), but the said defendant hath hitherto altogether refused, and did

did then refuse, to pay the same to the said plaintiff, and that the same were still unpaid, to the damage of the said plaintiff of two hundred pounds, and therefore he brought that suit, &c. as by the record and proceedings thereof, now remaining in the court here, to wit, at Westminster aforesaid. more fully appears : and the said defendant further saith, that the said Edward Chapman, the plaintiff in the said former plea, and the said Edward Chapman, the plaintiff in this now present suit, are the same person, and not other or different persons, and that the said Thomas Warren, the defendant in the said former plea, and the said Thomas Warren, the defendant in this plea, are one and the same person, and not different persons, and that the several causes of action mentioned in the said bill in the said former suit and the said several causes of action mentioned in the said bill in this present and latter suit, are the same causes of action, and not divers or different causes of action : and the said defendant further saith, that the said former suit so brought and prosecuted against him the said defendant by the said plaintiff is still pending in the said court here, not discontinued, tried, or determined ; and this, &c. : wherefore he prays judgment of the said bill in the said latter and present suit pending the said former suit, and that the same may be quashed, &c.

N. JONES.

AND the said plaintiff says, that the said bill of the said plaintiff, by reason of anything by the said defendant in pleading alledged, ought not to be quashed, because he says, that there is not any such record of such former plea now depending in the said court against the said defendant, by the name of, &c. remaining in the said court of our said lord the now king, before the king himself, at Westminster aforesaid, as the said defendant hath above in pleading alledged ; and this he the said defendant is ready to verify : wherefore he prays judgment, and that the said bill now here in this Term against the said defendant may be adjudged good, and that the said plaintiff may answer over, &c.

A replication of nul tiel record to such plea as the last.

Drawn by Mr. WARREN.

N. B. This replication was copied from other pleadings. This second action was commenced after judgment for

quashing the first action was entered on the roll, which was carried in.

JONES AND ANOTHER }
against
JONES.

AND the said defendants, in their proper persons, come and defend the force and injury, and say, that the said county of Denbigh is one of the twelve counties within the principality and dominion of Wales, within which said county there is, and at the time of exhibiting the said bill of the said plaintiff, and long before that time, was, a certain court of our lord the present king of great session, holden for the said county of Denbigh, before certain justices of the same court there, and that all and singular pleas and actions, as well real as personal, arising within the same county,

Plea to the jurisdiction of B.R. that the venue is within the principality of Wales, and that the defendants ought to be impleaded in the court of great session.

county, are, and at the time of exhibiting, &c. were, and of right ought to be, pleaded and pleadable within the said county of Denbigh, before the justices of the said court of great session there for the time being, and not here in the court of our lord the king before the king himself; and that they the said defendants, and also the said plaintiff, at the time of exhibiting, &c. and before, were and from thence hitherto have been resident and commorant within the same county, that is to say, at Ruthin in the said county; and this they are ready to verify to the said court here, &c.: wherefore, since the cause of action afore said arises within the said county of Denbigh, within the principality or dominion of Wales, the afore said defendants pray judgment, if the court of our lord the king here will or ought to have further cognizance of the plea afore said.

D. POOLE.

AND the afore said John, by his attorney, comes and cravesoyer of the afore said writs of *scire facias* sued out against him, and they are read to him, &c. which being read and heard, the said defendant prays judgment of the writs afore said, because he says, that the said plaintiff, on the day of suing out the said writs of *scire facias*, was not a baronet, as by the writs afore said is above supposed; and this he is ready to verify: wherefore, inasmuch as the afore said plaintiff is called by the afore said writs knight and baronet, the afore said defendant prays judgment of the writs afore said.

EDWARD SANDERS.

Plea, that defendant is an attorney of B. R. and ought not to be declared against in the custody of the marshal.

AND Thomas Mordaunt, in his proper person, comes and prays judgment of the bill of the said George Stamford, because he says that he the said Mordaunt, long before the exhibiting of the bill of the said G. S. against the said defendant, and at the time of exhibiting of the same, was, and still is, one of the attornies of the court of our said lord the king, before the king himself, as afore said; and that he then was and now is prosecuting and defending many pleas and suits for many true and faithful subjects of our lord the king, in the said court of our said lord the king, before the king himself as their attorney; and the said defendant further says, that he and all others the attornies of the said court of our said lord the king, before the king himself as afore said, prosecuting suits and pleas for their clients in the court of our said lord the king, before the king himself, by an ancient and laudable custom used and approved of according to the laws and customs of the realm, and the liberties of the same court of our said lord the king before the king himself, have been used, and ought, in all personal pleas wherein they are impleaded in the said court of our said lord the king, before the king himself, at the suit of any subject of our said lord the king, to be impleaded only by bill exhibited in the said court of our said lord

lord the king, before the king himself, against such attornies as are present in the same court, in their own proper persons, and not as being in the custody of the marshal of the marshalsea of our said lord the king, before the king himself: wherefore, inasmuch as the said defendant is not impleaded in this action as one of the attornies of the said court of our said lord the king, before the king himself, he prays judgment of the same bill, and that the same may be quashed, &c.

G. WOOD.

AND the said James Atwood, against whom the said William hath sued out his original writ by the name of Thomas A. comes in his proper person, and says, that he was baptized by the name of James, and that he hath been always, from the time of his baptism, hitherto called and known by the name of James A. to wit, at D. aforesaid, in the county aforesaid; without this, that he the said now defendant, at the time of suing out the said original writ of the said William, or at any time before or after, hitherto hath been or now is called or known by the name of *Thomas*, as by the said original writ is above supposed; and this he is ready to verify: wherefore he prays judgment of the said original writ, and that the same may be quashed, &c.

Plea, misnomer of defendant's christian name.

N. GROSE.

AND the said R. in his proper person, comes and defends the wrong and injury, and prays judgment of the said bill of the said Elizabeth, because he says, that the said Elizabeth before and at the time of exhibiting the bill of the said Elizabeth, was under coverture of one Samuel Mefs, her husband; which said Samuel Mefs is still living, to wit, at London aforesaid, in the parish and ward aforesaid, and this, &c. wherefore, inasmuch as the said Samuel Mefs is not named in the said bill, the said R. prays judgment of the said bill, and that the same may be quashed, &c.

Plea, that plaintiff is under coverture.

A. CHAMBER.

By statute 4. Anne, c. 16. the truth of this plea (being a dilatory one) must be proved by affidavit, and some probable cause shewn to the Court to believe it true.

A. C.

AND the said E. in her proper person, comes and defends the wrong and injury, and as to all the promises and undertakings in the said bill of the said F. except the promises and undertakings in the third count of the said bill mentioned, as far as the same relates to the sum of five hundred and eighty-seven pounds eleven shillings, part of the said sum of one thousand two hundred pounds in the said third count mentioned, the said E. prays judgment of the said bill of the said F. and that the same

Plea as to all, except, &c. that the promise, if any, were made by the defendant and one T. K. jointly: traversing that they were made by defendant alone.

same may be quashed; because she says that the said promises and undertakings in the said bill mentioned, except as aforesaid, if any such were made, and each and every of them was made by the said E. and one T. K. *jointly*, which said T. K. is still alive, to wit, at L. aforesaid, in the parish and ward aforesaid; *without this*, that the said promises and undertakings, except as aforesaid, or any of them, was or were made by the said E. alone, as the said F. has above in his said bill alledged; and this, &c.: wherefore as the said T. K. is not named in the bill of the said F. the said E. as to the said promises and undertakings (except as aforesaid), prays judgment of the said bill, and that the same may be quashed, &c. And as to the residue *non assumptis*.

T. BURROUGH.

Replication that they were made by the defendants separately.

And the said F. as to the said plea of the said E. as above pleaded as to all the said promises, &c. and says, that the said bill of the said F. ought not, by reason of any thing in that plea alledged, to be quashed, as is therein prayed, because he says, that the said promises and undertakings in the said bill (except as aforesaid) were made by the said E. separately, and not jointly by the said E. and the said F. K. in that plea mentioned (*modo & forma*); and this he prays may be enquired of by the country, &c.

In replevin, that the property is in himself, and traverses plaintiff's property.

Vide Co. Ent. 31. b. 1. Comyns, 57 & 5th. 293.

Pleas in abatement ought to be averred, 1. Com. 72, 73.

AND the said defendant, by his attorney, comes and defends the force and injury when, &c. and says that the said cattle, goods and chattels, at the time of the taking thereof were the proper goods and chattels of him the said defendant; *without this*, that the said cattle, &c. at the same time when, &c. were the property of the said P. G. as by the said declaration is above supposed; and this he is ready to verify: wherefore he prays judgment of the writ aforesaid, and that the same may be quashed, &c. be averred, 4. Com. 81. 1. Vent. 264. Lutw. 1466. Conclusion of a plea in abatement, 1. Com. 72, 73.

Attorney sued in B.R. pleads that he is an attorney of C. B.

1. Com. 3.

2. Bull. 207.

Lutw. 195.

2. Salk. 1.

AND the said defendant, in his proper person, comes and defends the force and injury, and says, that he the said defendant, long before the time of exhibiting of the said bill of the said P. G. and at the same time and continually afterwards was and yet is one of the *attornies* of the court of our lord the king, of the bench at Westminster, in the county of Middlesex, as by the *process* (a) under the seal of the same court of the bench to this

(a) If privilege of an attorney be pleaded with a writ, it is conclusive; if without, it is a good plea, but then a certiorari shall go to certify whether he be an attorney or not, Salk. 545. Com. 34. In

pleas to the jurisdiction or to the person, it is wrong to say when, &c. for by those words the jurisdiction and ability of the person is admitted. Inst. Cler. vol. 3. p. 10.

plea

plea annexed, more fully appears, attending in his said office in the same court there; and that he, for all the time aforesaid, hath prosecuted and defended, and still prosecutes and defends divers pleas and causes of divers and many subjects of our said lord the present king, in the same court of the bench aforesaid, as their attorney there; and the said defendant says, that he and all other attorneys of the same bench, prosecuting and defending for their clients in the same court, by laudable and antient custom, and according to the law of this kingdom of England, and the liberties and privileges of the same court of the bench aforesaid, used and approved from time whereof the memory of man is not to the contrary, ought not at any times past have been accustomed, according to the liberties and privileges of the said court of the bench aforesaid, for the whole time aforesaid used and approved, to be drawn or compelled against their will to answer before any justice or minister of our said lord the king, or other justices whatever in any court (except before the justices of our lord the king of the bench aforesaid, at Westminster aforesaid) in or upon any pleas or plaints (pleas of frank tenement, felonies and appeals only excepted); and this he is ready to verify: wherefore he prays judgment, if he ought to be compelled to answer to the said plea here in court, &c.

Privilege of attorney preferred to that of university.

Litt. Rep. 304.

Hartw. 305 to

510.

Godb. 404.

1. Show. 352.

1. Com. 73.

3. Mod. 146.

F. NORTON.

AND the said defendant, in his proper person, comes and defends the force and injury, and says, that the said county of Chester is, and from time whereof the memory of man is not to the contrary, hath been a county palatine, and there now are and for all the time aforesaid have been justices there, and that all and singular pleas for the recovery of manors, messuages and tenements lying and being within the same county, have been for all the time aforesaid, and still are pleaded and pleadable within the said county of Chester before the justices there for the time being, and not here in the court of our lord the king, before the king himself; and this he is ready to verify: wherefore, since the plea aforesaid is brought for the recovery of the possession of the manors, messuages, lands and tenements aforesaid within the said county palatine, the said defendant prays judgment, if the court of our lord the king here will or ought to have further plea or cognizance of the plea aforesaid.

Plea, that the cause of action accrued within a county palatine.

It is wrong to

add when, &c.

Inst. Leg. 120.

See the above

plea, 1. Com.

2. 4. Inst. 212.

Robinson Ent. 1.

Brown, 473.

E. BOOTLE.

AND the said defendants, in their proper persons, come and defend the force and injury, when, &c. and say, that the county of Carmarthen is one of the twelve counties within the principality and dominion of Wales, within which said county there now is, and at the time of exhibiting the said bill of the said plaintiff, and long before that time, was a certain court of our lord the king's of great session holden before certain justices of the same

Plea in trespass, to the jurisdiction of B. R. that the cause of action arose in the great session in Wales.

2. Mod. 60. 20,

11, 12, 13.

be omitted?

See the above pleas, and qu. Should not the words when, &c.

court there for that county, and that all and singular pleas and actions, and cognizance of pleas and actions, as well real as personal, arising within the said county of Carmarthen, are and at the time of exhibiting the said bill of the said plaintiff, were, and of right ought to be pleaded and pleadable, and tried, determined, and decided in the said court of our said lord the king, of great session holden within the said county of Carmarthen, before the said justices of the said lord the king, of great session there for the time being, and not here in the court of our lord the king, before the king himself; and that the said defendants and the said plaintiff, at the said time when the trespass aforesaid is supposed to be committed, were, and each and every of them was, and continued from thenceforth and hitherto have, and each and every of them hath been resident and commorant in the said county of Carmarthen, and that the cause of action in the said declaration mentioned, if any, accrued to the said P. G. in the said county of Carmarthen, within the principality or dominion of Wales, to wit, at the parish of aforesaid, in the said county of Carmarthen, and not at Ross, in the county of Hereford, in the said deed mentioned, or elsewhere out of the said county of Carmarthen, in the principality or dominion of Wales; and this they are ready to verify: wherefore they pray judgment, if the said court of our said lord the king here will or ought to have further cognizance of the plea.

C. PRATT.

Plea, that the plaintiff is dead, and no such person in being when the bill was exhibited.

AND the said Richard, in his proper person, comes and prays judgment of the aforesaid bill, because he says, that the said James Burley, at whose suit the same bill is above supposed to be exhibited against him the said Richard at the time of exhibiting that bill, and long before, was dead, and that there is not, nor at the time of the exhibiting of the aforesaid bill against him the said Richard, was there any such person in being as the said J. B. as in and by the aforesaid bill is above supposed; and this the said Richard is ready to verify: and therefore he prays judgment of the said bill, and that the same may be quashed, &c.

R. DRAPER.

Plea of misnomer of defendant's Christian name.

Lutw. 2. 1.
Bay. 509.
Show. 394.
Comb. 1988.
Will. 413.
Salk. 6.
6. Mod. 116.

AND George Holder, against whom the aforesaid bill is exhibited by the name of Richard Holder, by his attorney, comes and defends the wrong and injury, when, &c. and saith that he now is, and from the time of his baptism, hitherto has been called and known by the name of *George* Holder; without this, that he the said George Holder was ever called or known by the name of Richard Holder, as by the bill aforesaid is above supposed; and this he is ready to verify: wherefore he prays judgment of the said bill, and that the said bill may be quashed.

AND

AND the aforesaid T. says, that the aforesaid cottage in which &c. Plea of ancient demesne, and that the lands are pleadable in the court of the manor, &c. 1. Com. 2. situate and being in the said waste called Conygar Hill, in the said declaration above mentioned, is held of R. C. esq. as of his manor of W. in Herefordshire; which said manor of W. is, and from time whereof, &c. was of *antient demesne* of the crown of our lord the king, and that the aforesaid cottage is, and for all the time aforesaid was pleaded and pleadable in the court of the same manor by patent writ of our lord the king, of right close only, and not elsewhere or otherwise; and this he is ready to verify, as the Court here shall consider of, &c.: wherefore he prays judgment, if the court of our lord the king now here will further consider thereof, &c.

R. DRAPER.

AND the said defendant, by his attorney, comes and defends the force and injury, and prays judgment of the declaration aforesaid, Plea, that the lands are held of ancient demesne. because he says, that all the tenements and premises in the declaration aforesaid specified, in which the trespass and ejectment are above supposed to be done, are held of the manor of K. in L. in the county of Lincoln; and the said manor, &c. are, and from the time whereof, &c. have been of *antient demesne* of the crown of the king of England, and now of Great Britain; and that all actions for any trespass and ejectment done in or concerning the said tenements and premises in the court of the said manor, &c. and not elsewhere, for all the time aforesaid have been used and accustomed, and ought to be tried and determined; and this he is ready to verify as the Court shall think proper: wherefore he does not intend that the Court will take cognizance of the said plea, &c.

AND the said A. in his proper person, comes and says, that Plea, that the this court ought not to have further cognizance of the plea action arose out of the jurisdiction of Ely. this court ought not to have further cognizance of the plea aforesaid, because he says, the cause of action aforesaid (if any of the jurisdiction accrued to the said B.) accrued to the said B. *out of the jurisdiction of this court, to wit, at T. in the county of N. and not at Ely* in the said declaration named, or elsewhere, within the jurisdiction of the court; and this the said A. is ready to verify: wherefore he prays judgment, if this Court can or will have further cognizance of this plea, &c.

AND the said defendants, by their attorneys, come and defend the force and injury, when, &c. and say, that the said plaintiff Plea, that plaintiff is an alien enemy. is an alien, born in the kingdom of Spain, under the allegiance of the king of Spain, an adversary of our lord the now king, Carth. 229, 230. Litt. 198. Instit. Leg. 326. 2. Rol. Ent. 3. Cliff's Ent. 4. of mother and father enemies of our said lord the now king, and adhering to his adversary; and that the said S. entered into this kingdom of Great Britain without the safe-conduct of the said lord the NOW 2. Id. Ray. 1247.

now king; and they are ready to verify where, when, and as the court here shall award: wherefore they pray judgment, if the plaintiff ought to be answered to his said bill.

Replication pre-
testing that he is
not an alien, says
he is here under
the licence and
protection of the
king.

And the said plaintiff says, that he, notwithstanding any thing by them the said defendants in pleading alledged ought to be answered to the said bill, protesting that he was not an alien born in the kingdom of Spain, under the ligeance of the king of Spain, protesting that he was born at Muhlhaven in Germany, under the dominion of the Emperor of Germany; for plea the said S. saith that he, long before the said time when, &c. to wit, on the first day of May, A. D. 1743, and continually from thenceforth to and at the said time, when, &c. was under the licence and protection of the lord the now king of Great Britain, in that part of Great Britain called England, to wit, at Maidstone aforesaid, in the county aforesaid, and continually from thenceforth hath remained and now doth remain under the licence and protection of the said lord the now king of Great Britain, &c. to wit, at Maidstone aforesaid, in the county aforesaid; and this he is ready to verify: wherefore he prays judgment, and that he may be answered to his said bill.

Plea, another
action depending
in the Common
Pleas.

1. Salk. 715.

Pract. Reg. 7. 5.

8. Lilly's Ent.

fo. 2.

Combe v. Pitt.

3. Burr. 14. 23.

AND the said H. comes and defends the force and injury, and prays judgment of the said declaration, because he says that said G. in the Term of St. Hilary, in the eleventh year of the said lord the king, of the bench here, to wit, at Westminster aforesaid, impleaded the said H. by the name of, &c. in a plea of trespass on the case, declaring against the said H. in the same court in the said plea; that whereas, &c. (insert the declaration); which said plea still depends in the said court of the said lord the king of the bench, not determined or discontinued, as by the record and proceedings thereof remaining in the said court of the said lord the king of the bench here to wit, at Westminster aforesaid, manifestly appears. And the said H. further says, that the said cause of action above mentioned and specified in the said herein-recited declaration of the said G. and the said cause of action above mentioned and specified in the declaration of the said G. to which he now here pleads, are one and the same cause of action, and not divers; and this he is ready to verify: wherefore he prays judgment of the said declaration of the said G. to which he now here pleads, and that the same may be quashed.

Salk. 210.

Ld. Ray. 1205.

See page 64 for
similar plea.

Plea in trespass,
that plaintiffs
were joint tenants
with others who

AND the defendant, by his attorney, comes and defends the force and injury, &c. and prays judgment of the said bill, because he says, that the said plaintiff, neither at the time when, &c. nor are not named in the declaration. In trespass, *quare clausum fregit*, it is a plea in abatement to say plaintiff is tenant in common with another, and cannot be given in evidence on the general issue, as it may where one tenant in common brings trespass against the other, 1. Vent. 214. 1. Salk. 32.

ever

ever since, had, nor hath any thing in the said close in which, &c. nor in the said trees and underwood in the said bill mentioned to have been there growing, nor in any of them, nor in any part thereof, nor in the said goods and chattels in the bill mentioned, nor in any of them, nor in any part thereof, but in common jointly and undivided with T. M. esq. and R. F. gent. who are both still alive, to wit, at the parish of D. aforesaid; and this the said defendant is ready to verify: wherefore, inasmuch as the said T. M. and R. F. are not named in the said bill, he prays judgment of the said bill, and that the same may be quashed.

AND the said A. in his proper person, comes and says, that he ought not to be compelled to answer the said original writ, because he says, that he is, and on the day of suing of the said original writ, and long before, was one of the attornies of the court of the lord the king of the bench here, and that in the same court here there is, and from time whereof, &c. there hath been a custom used and approved of in the same court, that no attorney of the said court hath, against his will, been compelled to answer any person in any personal action prosecuted in the same court here by original writ sued out (which have not concerned the king), unless he hath first been forejudged from his office of an attorney of this court, upon a bill exhibited here to the justices of our said lord the king of the bench against such attorney and assailed in the same court; and the said A. in fact says, that he hath not been forejudged from the office of an attorney of this court, and that he is impleaded by the said original writ against his will, and against the custom aforesaid; and this, &c.: whereupon, as the said A. is an attorney of the said court, and on the day of suing out the said original writ, and long before, was an attorney of the said court, he prays his privilege aforesaid to be allowed and adjudged to him, and that he may not answer the original writ for the cause aforesaid.

W. CHAPPLE.

Plea by an attorney of C. B. that he is impleaded by original writ, and not by bill. He cannot plead thus when sued as executor.—*N. B.* It must be pleaded he was an attorney at the time of suing out the writ, or it is bad on general demurrer. Vide Lilly's Eng. Skin. Rep. 582. Affidavit of being admitted and enrolled, and not forejudged, to be annexed.

AND the said T. W. in his proper person, comes and defends the wrong and injury, and prayeth judgment of the said writ of the said T. because he says, that he the said T. W. at the time of suing forth the said original writ of the said T. and long before, was inhabiting, resident, and commorant in the parish of St. James, in the liberty of Westminster, in the county of Middlesex; without this, that the said T. W. was ever inhabiting, resident, or commorant at London aforesaid, from the time of his nativity, as the said T. by his said writ hath above supposed;

Plea, that defendant was commorant in the parish of St. James, traversing his commorancy at L.

and this he is ready to verify: wherefore he prays judgment of the said writ, and that the same may be quashed.

Replication
thereto.

Dies datus to re-
join.

And the said T. saith, by any thing by the said T. W. above in pleading alledged, the said writ ought not to be quashed, because he says, that some short time before the issuing of the said writ, the said T. W. was commorant in E. aforesaid, to wit, upon the twelfth of November 1738, at the parish and ward aforesaid; and this he prays may be enquired of by the country; and thereupon the said T. W. prays leave thereupon to rejoin in fifteen days from Easter Day, and he hath it, &c. The same day is given to the aforesaid T. here, &c.

Plea, that defend-
ant is named
without his *ad-
dition*.

AND the said James, in his own proper person, comes and defends the wrong and injury, &c. and saith, that he the said T. at the time of suing forth the original writ of the said W. in this behalf, and long before, was and still is a *carver*, and of the trade, art, and mystery of a carver, and during all the said time hath used and exercised the said trade, art, and mystery of a carver, to wit, at Westminster aforesaid; and the said James is not, nor ever was, of any other estate, degree, or mystery: wherefore, inasmuch as he the said James is not named in the said writ by the said addition of a *carver*, he the said James prays judgment of the same writ, and that the same may be quashed.

A like plea.

1. Salk. 7. 50.
55.
2. Hob. 284.
3. Vent. 151.
Rast. 108, 289.

AND the said W. C. innholder, against whom the said James hath brought his original writ by the name of W. C. late of Wales in the county aforesaid, comes in his proper person, and defends the force and injury, and prays judgment of the said writ, because he says, that he the said W. C. on the day of suing forth the said original writ of the said James, and long before was, and yet is, an innholder; and this he is ready to verify: wherefore, for that the said W. is not named by the said original writ of the said Jane by the name of William Coward *innholder*, as he ought to be, according to the form of the statute of Additions in the name of the defendant lately made and provided, the said William prays judgment of the same writ, and that the same writ may be quashed, &c.

E. BOOTLE,

Replication there-
to, that plaintiff
sued out ori-
ginal against de-
fendant by his
proper addition.

And the said Jane saith, that, by any thing by the said W. C. above in pleading alledged, her said writ ought not to be quashed, because she saith, that the said Jane, by the name of Jane Noble heretofore, to wit, upon the eighteenth day of April, in the 12th year, &c. sued forth out of the lord the king's high court of chancery (the said high

high court of chancery then being at Westminster, in the county of Middlesex) her said original writ against the said W. C. by the name of W. C. late of Wales, in the said county of S. innholder, in the said plea of trespass on the case directed to the then sheriff of S. which said writ follows in these words, to wit, Geo. 2. &c. (set out the writ); and the sheriff of S. to wit, J. S. esq. at the return of the said writ, returned to the said court here, that the said Jane had found pledges to prosecute, to wit, J. Doe and R. Roe, and the said W. C. had nothing in his bailiwick whereby he could be attached, neither was he found in the same, as by the said writ and return now remaining, assised of record in the court of our said lord the king here before his justices, to wit, at Westminster aforesaid, more fully appears; and this she is ready to verify: wherefore, inasmuch as the said W. C. is named in this writ innholder, according to the form of the statute of Additions, the said Jane prays judgment, &c. that her said writ may be adjudged good, and that the said W. C. may further answer, &c.

R. DRAPER.

AND the said W. K. in his proper person, comes and defends the wrong and injury, and says that the said R. in Michaelmas Term, in the twenty-first year of the reign of our lord the present king, for the recovery of his damages, by reason of not performing the said promises in the said declaration mentioned, did prosecute out of the said court of our said lord the present king, before the king himself, the same court then and there being at Westminster, in the said county of Middlesex, in a certain original writ of our said lord the king, of attachment of privilege against the said W. K. directed to the sheriff of Middlesex, whereby the said sheriff was commanded that he should attach the said W. R. if he should be found in his bailiwick, &c. (set out the writ) which said writ the said R. afterwards, and before the return thereof, that is to say, on the 10th day of January 1747, at Westminster aforesaid, delivered to C. G. esq. and E. D. esq. then being sheriff of Middlesex, to be executed in due form of law; at which day of the return of the said original writ, that is to say, on Saturday next after eight days from the day of St. Hilary, come the said R. and the said W. K. also appeared in the said court here to answer the said R. according to the exigency of the said original writ; and the said sheriff, to wit, C. G. and E. D. esquires, returned by virtue of the said writ to them directed, that they had taken the said W. K. whose body they had ready, as by the said writ and return thereof in the court of our said lord the king, before the king himself, here to wit, at Westminster aforesaid, remaining on record, more fully appears: and the said W. K. further saith, that the said original writ of privilege of attachment, prosecuted as aforesaid

Plea to the action of the writ, that the plaintiff sued out the original writ of attachment of privilege before the cause of action accrued.

by the said R. was prosecuted by the said R. with intent to implead the said W. K. for the cause of action in the said declaration above specified, to cause him to appear in the said court here, and to declare against him for the cause of action in the said declaration above mentioned, according to the course and custom of the said court; and the said R. according to such his intent afterwards, to wit, in the same Hilary Term, did declare, by bill against him the said W. K. in manner and form aforesaid: and the said W. K. further says, that the said cause of action in the said declaration mentioned, did not accrue to the said R. at any time before the suing out the said original writ of privilege of attachment; and this, &c. wherefore he prays judgment of the said writ and declaration thereupon, and that the same may be quashed. JOHN FORD.

Plea, that *administration* was granted to the defendant and another person, who ought to have been made defendant.

AND the said C. N. and W. J. in their proper persons, come and defend the wrong and injury, and pray judgment of the said bill of the said W. B. because they say, that the said J. W. on the tenth day of February 1747, at H. aforesaid, died intestate, after whose death, *administration* of all and singular the goods, chattels, and credits, which were of J. W. at the time of his death, by G. P. doctor of laws, in and throughout the whole archdeaconry of St. Alban's, in the diocese of London, official lawfully appointed, to whom the committing of the whole administration of right did belong, on the fourth of March 1747, at, &c. in due form of law, was committed to the said C. N. W. J. and one E. B. of St. Alban's, widow, jointly; and that the said E. together with the said C. N. and W. J. as administrators, did there administer divers goods and chattels, which were of the said J. W. at the time of his decease, which said E. is still living, to wit, at H. aforesaid; and this, &c. wherefore, inasmuch as the said E. is not made a co-defendant with the said C. and W. in the said bill, the said C. and W. pray judgment of the said bill, and that the same may be quashed.

Plea by *admini-*
stratrix sued as
executrix, that
she ought to be
sued as admini-
stratrix, and not
as executrix.
Salk. 297, 298.
5. Mod. 145.
1. Vent. 178.

AND the said E. by her attorney, comes and defends the wrong and injury, and prays judgment of the said bill of the said T. because she says, that the said J. on the first of November 1738, at S. aforesaid, died intestate, after whose death, *administration* of all and singular the goods, chattels, and credits, which were of the said James at the time of his death, by N. N. master of arts, and archdeacon of the archdeaconry of Totness lawfully constituted, to whom the committing of the said administration then of right did belong, upon the twenty-fourth of November 1738, at, &c. in due form of law was committed to the said E. in which case the said T. ought to have named the said E. *admini-*
pistratrix of all and singular the goods and chattels which were of the said J. at the time of his decease, who died intestate, and not

executrix

executrix of the last will and testament of the said J.; and this she is ready to verify: wherefore she prays judgment of the said bill, and that the same may be quashed; with this, that the said E. will verify that she did not administer any goods and chattels of the said J. before the administration committed to her as aforesaid.

AND the said E. by his attorney, comes and defends the force and injury, and prays judgment of the said writ, because he says, that the said J. K. on the first of September 1726, at the parish aforesaid, died intestate, after whose death, *administration* of all and singular the goods and chattels which were belonging to the said J. K. at the time of his death, since the decease of the said J. K. that is to say, on the first of December, in the year aforesaid, was in due form of law committed to the said C. to wit, at the parish aforesaid; without this, that the said C. is executrix of the last will and testament of the said J. K. as the said C. by his said writ and declaration hath above supposed; and this, &c. wherefore, since that the said C. is not by his said writ named *administratrix* of the goods and chattels which were of the said J. K. the said E. prays judgment of the said writ, and that the same may be quashed.

Plea, that the plaintiff is administratrix, traversing her being executrix.

AND S. L. against whom the said J. hath brought this action by the name of S. M. comes and defends the wrong and injury, and prays judgment of the said writ, because she says, that she the said S. before and at the time of suing out the original writ of the said J. was under coverture of one J. L. her husband; which said J. L. is still living, to wit, at Westminster aforesaid; and this she is ready to verify: wherefore, inasmuch as the said J. L. is not named in the said writ, she prays judgment of the said writ, and that the same may be quashed.

Plea, that the defendant is under coverture.

Vide Cases Temp. Gul. 3. fo. 503. what a proper replication to this plea, Vide plea of coverture in plaintiff, in Burr. 3. v. p. 14. 124.

AND the said W. by his attorney, comes and defends the wrong and injury, &c. and prays oyer of the said writing obligatory, and it is read to him in these words: "Know all men," &c. (set out the bond, but not the condition) which being read and heard, the said William says, that the said G. in the said writing named, duly sealed and executed the said writing, and thereby became jointly bound with the said W. to the said J. to wit, on the same day and year aforesaid, at L. aforesaid, and that the said G. is still alive, to wit, at L. aforesaid; and this he is ready to verify: wherefore, inasmuch as the said G. is not named in the said writ, the said W. prays judgment of the said writ, and that the same may be quashed.

Plea, that another person signed the bond with the defendant. Lilly's Ent. 27.

AND

Plea, that the plaintiff is an infant and hath declared by attorney.

AND the said R. by his attorney, comes and defends the wrong and injury, and prays judgment of the above declaration, because he says, that the aforesaid D. *is now within the age of twenty-one years, to wit, of the age of nineteen years and no more*, and that the aforesaid D. by W. D. his attorney, in the court here in the plea aforesaid hath declared, whereas by the law of the land the said D. by his next friend in the said court to be admitted, ought to have declared; and this he is ready to verify: wherefore, inasmuch as the said D. being within age, by W. D. his attorney, in that plea in the said court here hath declared, the said R. prays judgment of the said declaration, and if he to the same ought to be compelled to answer.

Plea, that the defendant is an infant.

AND the said J. by R. W. his guardian, who is now admitted by the court of our said lord the king here to defend for him the said J. *who is under the age of twenty-one years*, comes and defends the wrong and injury, when, &c. and saith, that he is under the age of twenty-one years, that is to say, of the age of fifteen years, and no more; and this, &c. wherefore he doth not intend that during his minority he ought to answer the said plaintiff of the said debt as aforesaid, and prayeth therefore that the said plea may remain till the full age of him the said J.

Plea, that others who are co-executors are not made defendants.

AND the said T. and J. in their proper persons, come and defend the wrong and injury, and pray judgment of the writ aforesaid, because they say, that the aforesaid J. F. in his lifetime, at N. aforesaid made his last will and testament in writing, and thereby made, constituted, and appointed the said T. and J. together with A. F. his wife, and one E. F. his sister, *executors* of his said last will and testament, and afterwards there died; after whose death, the said A. F. and E. F. *administered* divers goods and chattels which were of the said F. at the time of his death, as *executors* of the last will and testament of the said F. that is to say, at N. aforesaid, which said A. F. and E. are still living, that is to say, at N. aforesaid; and this, &c. wherefore, since the said A. F. and E. are not named defendants in the writ aforesaid, the said T. and J. pray judgment of the said writ, and that the same may be quashed.

Plea, that the plaintiff is a popish recusant convicted.

AND the said E. by her attorney, comes and defends the wrong and injury, and says, that the said plaintiff, at the time of exhibiting the said bill of the said J. and long before, was and ever since hath been a *popish recusant*, and the said J. now is, and before the day of exhibiting the said bill was duly convicted of popish recusancy, to wit, at the general quarter sessions of the peace of our lord the now king, holden at Leeds, in the West Riding of the county of York, in and for the said

West

A B A T E M E N T.

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West Riding, by adjournment on the twentieth day of October, in the nineteenth year, &c. before G. B. and H. J. esquires, and others their fellows, then justices of our said lord the king, assigned to keep the peace of our said lord the king within the West Riding aforesaid, and also to hear and determine divers felonies, trespasses, and other misdemeanors within the said West Riding of the county aforesaid; which said conviction was estreated and certified from the said court of the sessions aforesaid into the court of our lord the now king, before the king himself, according to the form of the statute in that case lately made and provided, and the same there still remains in its full force, strength, and effect, not reversed or annulled; and this she is ready to verify by the said record: wherefore she prays judgment of the said bill, and that the same may be qualshed, &c.

AND the said defendant, by A. B. his attorney, comes and defends the wrong and injury, and prays judgment of the said bill, because he says, that in the said Term of St. Michael, before our lord the king at Westminster, came one George Lake, by C. D. his attorney, and exhibited in the court of our said lord the king, before the king himself here, to wit, at Westminster aforesaid, his certain bill against the said defendant in the custody of the marshal of the marshalsea of our sovereign lord the king, before the king himself, of a plea of debt, and found pledges of prosecuting, to wit, John Doe and Richard Roe; and by the said bill the said George complained against the said defendant, being in the custody, and of a plea, &c. and for that, &c. (set out the declaration) as by the record and proceedings thereof remaining in the same court of our lord the king, before the king himself here, to wit, at Westminster aforesaid, fully appears, which said suit still remains depending and undetermined, and in the said court of our said lord the king here, to wit, at Westminster aforesaid; and the said defendant avers that the said Benjamin Pitt, named in the said bill of the said George L. and the said B. P. the now defendant named in the said bill of the said R. C. are one and the same person, and not other or different; and the said supposed offence in the said first count of the said bill of the said G. L. mentioned, and the said supposed offence in the said first count of the said bill of the said R. C. mentioned, are in fact one and the very same identical offence, and not other or different; and this, &c. wherefore he prays judgment of the said bill of the said R. C. and that the same may be qualshed.

Plea to a popular action, that a prior suit is depending against another person for the same offence.

See the subsequent proceedings, and the report of this case, 3. Burr. 1424.

J. NASH.

AND the said Henry Noah, in his proper person, comes and defends the wrong and injury, when, &c. and prays judgment of the original writ of the said John, because he says, that at the time of making of the said several promises in the said declaration

Plea, that the promises were made by defendant jointly with another with whom he was partner.

mentioned, he the said H. N. was partner, and carried on trade and partnership with one W. H. which said W. H. at the time of suing out, &c, was and still is living, to wit, at, &c. and the said H. N. in fact, further says, that the said several promises and undertakings in the said declaration mentioned, were and each of them was made by him the said W. H. jointly with him the said H. N. and not by him the said H. W. alone, as the said J. hath in and by his said original writ supposed; and this, &c. wherefore, &c.

Replication, that defendant and his pretended partner are one and the same person.

Tried at Guildhall after Hilary Term 1783, before Lord Mansfield. Verdict for plaintiff.

And the said T. says (*causari non*) because he says, that the said W. H. and H. N. are one and the same person, and not other or different persons; and that the promises and undertakings in the said declaration mentioned were not made by any other person of the said name of W. H. jointly with the said H. N. but by himself the said H. N. otherwise W. H. *solely*, as the said T. hath above thereof complained against him; and this the said T. prays may be enquired of by the country, &c.

In the king's court of record of his Honour of Peverell, and additional limits of the same.

Plea to the jurisdiction of an inferior court. Co. Litt. 127.

MESS } AND the said Samuel, in his own proper person, *against* } comes and pleads, that this court ought not, to FREETH. } take further cognizance of the action aforesaid, because he says, that the cause of action aforesaid (if any accrued to the said Daniel) accrued to the said Daniel out of the jurisdiction of this court, that is to say, at the town and county of the town of Nottingham, and not at Barford, in the county of Nottingham, or elsewhere within the jurisdiction of this court; and this the said Samuel is ready to verify: wherefore he prays judgment whether this Court will take any further cognizance of the action aforesaid.

Replication thereto, that the cause of action accrued within the jurisdiction.

And the said Daniel says, that notwithstanding any thing by the said Samuel above in pleading alledged, this Court ought not to be precluded from taking cognizance of the action aforesaid, because he says that the cause of action aforesaid did accrue to the said Daniel within the jurisdiction of this Court, that is to say, at Barford aforesaid, in the said county of Nottingham; and this the said Daniel prays may be enquired of by the country, &c.

The doctrine in Co. Litt. 127. that a plea to the jurisdiction may be demurred to, because the party does not make himself party by defending the wrong and injury, &c. is over-ruled by the case of Ferrers and

Miller, reported in Carthew 220, and Salk. 217. Though the cause of action did not arise at Barford, yet if it accrued any where within the jurisdiction of the court, it is sufficient. G. S. HOLROYD.

AND the said William, who is sued by the name of *Matthew*, in his proper person comes and pleads, that he was baptized by the name of William, to wit, at London aforesaid, in the parish and ward aforesaid, and by the name of William hath always hitherto since his baptism been called and known; without this, that the said William now is, or at the time of the exhibiting of the bill of the said Peter, James, and William, as such assignees as aforesaid, was or ever before had been, or ever since hath been, called or known by the Christian name of *Matthew*, as by the said bill of the said Peter, James, and William, as such assignees as aforesaid, is above supposed: and this he the said William is ready to verify: wherefore he prays judgment of the said bill, and that the same may be quashed.

Plea in abatement, that the defendant was baptized by the name of William, that he was ever called or known by the name of Matthew.

E. WIGLEY.

AND the said defendant, by A. B. his attorney, comes and defends the force and injury, and says, that the said plaintiff, at the time of the exhibiting the said bill of the said plaintiff, and long before, was, and ever since hath been, a popish recusant; and that the said plaintiff now is, and before the day of exhibiting of the said bill was, duly convicted of popish recusancy, to wit, at the general quarter sessions of the peace of our lord the now king, holden at Leeds, in the West Riding of the county of York, in and for the said West Riding, by adjournment, on the twelfth day of October, in the nineteenth year of the reign of our sovereign lord George the Second, now king of Great Britain, before esquires, and others their fellows, then justices of our said lord the king assigned to keep the peace of our said lord the king within the said West Riding of the county aforesaid, and also to hear and determine divers trespasses, felonies, and other misdemeanors committed within the said West Riding of the county aforesaid; which conviction was estreated and certified from the said court of the session aforesaid unto the court of our lord the king, before the king himself, according to the form of the statute in such case made and provided, and the same there still remains in its full force, strength, and effect, not reversed or annulled; and this he is ready to verify: wherefore he prays judgment of the said bill, and that the same may be quashed, &c.

Plea, that the plaintiff is a popish recusant.

AND the said plaintiff saith, that he, notwithstanding anything by the said defendant in pleading alledged, ought not to be answered to the said bill, protesting, that he is not an alien born in the kingdom of Spain, under the allegiance of the king of Spain; protesting also, that he was born at A. in Germany, under the dominion of the emperor of Germany: nevertheless, for a replication in this behalf, the said plaintiff saith, that he, long before the said time when, &c. to wit, on, &c. and continually from thenceforth to and at the time when, &c. was under the licence and protection of the lord the now king of Great Britain, called England,

Replication, that he was born in Germany, and under the protection of the king of England.

to

to wit, at B. in the county aforesaid, and continually from thenceforth hath remained, and still doth remain, under the licence and protection of the said lord the king of Great Britain, to wit, at, &c. ; and this, &c. : wherefore he prays judgment, and that he may be answered to his said bill; &c.

Defence.

And the said defendant says, that the said plea of the said plaintiff, by him in reply above pleaded in maintenance of his said bill, to which said plea, in manner and form above pleaded in reply, the said defendant hath no need, nor is he bound by the law of the land to answer ; and this he is ready to verify : wherefore, for want of a sufficient plea in reply in this behalf, he, as before, prays judgment if the said plaintiff ought to be answered to his said bill, &c.

Joinder.

And the said plaintiff saith, that the said plea of the said plaintiff by him above pleaded in reply, in maintenance of his said bill, is good and sufficient in law for the said plaintiff to maintain his said bill ; which said plea, and the matter therein contained, the said plaintiff is ready to verify and prove as the Court shall think meet ; and because the said defendant hath not answered the said plea, nor hath hitherto in anywise denied the same, the said plaintiff, as before, prays judgment, and that he may be answered to his said bill : but because the court of our said lord the king now here is not yet advised about giving judgment of and upon the premises, a day is therefore given to the said parties to be before our lord the king at Westminster until, &c. to hear judgment of and upon the same premises, for that the said court of our said lord the king here is not yet advised thereof, &c.

*Plea, that the plaintiff is an infant, and ought to sue by *prochein amy*.*

AND the said defendant, by A. B. his attorney, comes and defends the wrong and injury, and prays judgment of the above declaration, because he says, that the aforesaid plaintiff now is within the age of twenty-one years, that is to say, of the age of nineteen years, and no more ; and that the aforesaid plaintiff, by A. B. his attorney, in the court here hath declared, when by the law of the land the said plaintiff, by his next friend in the said court to be admitted, ought to have declared ; and this he is ready to verify : wherefore, inasmuch as the said plaintiff, being within age, by A. B. his attorney in that plea in the said court here hath declared, the said defendant prays judgment of the said declaration, if he ought to be compelled to answer the same.

If there be divers executors, some above and some under age, they may all sue by attorney, 2. Saunders, 209.

AND

AND the said defendant, in his proper person, comes and defends ^{Plea, that the} the wrong and injury, and prayeth judgment of the said writ of the defendant was the said plaintiff, because he says, that he the said defendant, at the time commorant in of suing forth the original writ of the said plaintiff, and long before, James, and tra- the parish of St. was inhabiting, resident, and commorant, in the parish of St. James, verses that he in the liberty of Westminster, in the county of Middlesex; without was commorant this, that the said defendant was ever inhabiting, resident, or com- at London. morant, at London aforesaid, as the said plaintiff by his said writ Raft. 108. 126. hath above supposed; and this he is ready to verify: wherefore he 16a. prays judgment of the said writ, and that the same may be quashed.

And the said plaintiff saith, that, by anything by the said de- ^{Replication, that} fendant above in pleading alledged, the said writ of the said the defendant, plaintiff ought not to be quashed, because he saith, that some short some short time time before the issuing of the said writ the said defendant was com- before the issu- morant in London aforesaid, to wit, upon the twelfth day of No- ing the writ, was vember, in the year of our lord 1738, in the parish and ward afore- commorant in London. said; and this he prays may be enquired of by the country.

And the said defendant says, that the said plea of the said ^{Demurrer.} plaintiff, in manner and form as the same is above pleaded by way of replication, and the matter therein contained, are insufficient in law for the said plaintiff to maintain his said writ to be good against him the said defendant, and that he is under no necessity, nor obliged by the law of the land, to answer to the said plea, in manner and form as the same is above pleaded; and this, &c.: wherefore, for want of a sufficient replication in this behalf, the said defendant prays judgment of the said writ, and that the same may be quashed.

And the said plaintiff, inas-much as he hath above alledged suf- ^{Joinder.} ficient matter in law in his said replication to maintain his said writ against the said defendant, which he is ready to verify; which said matter the said defendant doth not deny, nor in anywise answer, but altogether refuses to admit the averment thereof; therefore as before the said plaintiff prays judgment, and that the said defendant may further answer the same: and because the justices here are willing, &c.

AND the said defendant, by A. B. his guardian, who is ^{Plea, that the} now admitted by the court of our said lord the king here to defendant is a defend for him the said defendant, who is under the age of twenty- minor, and ought one years, that is to say, of the age of twelve years, and no more; and this he is ready to verify: wherefore he doth not intend that not to answer during his minority he ought to answer the said plaintiff of the debt till of full age. aforesaid, and prayeth therefore that the said plea may remain until the full age of him the said defendant.

AND

Plea by an attorney sued by an original, that he ought to be sued by bill.

AND the said defendant, in his proper person, comes and says, that he ought not to be compelled to answer the said original writ, because he says, that he is, and on the day of suing out of the original writ, and long before, was, one of the attornies of the court of our lord the king of the bench here; and that in the same court there now is, and from time whereof the memory of man is not to the contrary there hath been, a custom used and approved of in the same court, that no attorney of the said court hath against his will been compelled to answer any person in any personal action prosecuted in the same court here by original writ sued out which have not concerned the king, unless he hath been first forejudged from his office of an attorney of this court upon a bill exhibited here to the justices of the said lord the king of the bench against such attorney, and filed in the same court; and the said D. in fact saith, that he hath not been forejudged from his office of an attorney of this court, and that he is impleaded by the original writ aforesaid against his will, and against the custom aforesaid; and this he is ready to verify: wherefore, as the said defendant is an attorney of the said court here, and on the day of suing out the said original writ, and long before, was, an attorney of the said court here, the said defendant prays his privilege aforesaid to be allowed and adjudged him, and that he may not answer the said original writ for the cause aforesaid.

Plea, another action depending.

AND the said defendant, by A. B. his attorney, comes and defends the wrong and injury, and prays judgment of the said declaration, because he says, that the said plaintiff heretofore, in the Term of St. Hilary, in the tenth year of the reign of our said lord the king, in the court of our said lord the king of the bench here, to wit, at Westminster aforesaid, impleaded the said defendant by the name of A. B. of, &c. chapman, in a plea of trespass on the case, declaring against the said defendant in the same court in the said plea, that whereas, &c. [here insert the declaration] and therefore he brings suit, &c.; which said plea still depends in the said court of our said lord the king of the bench here, to wit, at Westminster aforesaid, not determined or discontinued, as by the record and proceedings thereof remaining in the said court of the said lord the king of the bench here, to wit, at Westminster, manifestly appears; and the said defendant further saith, that the cause of action above mentioned, and specified in the declaration of the said plaintiff herein recited, and the said cause of action above mentioned, and specified in the said declaration of the said plaintiff, to which the said defendant now here pleads, are one and the same cause of action, and not divers; and this he is ready to verify: wherefore he prays judgment of the said declaration of the said plaintiff to which he now pleads, and that the same may be qualshed.

AND

AND the said D. by A. B. his attorney, comes and defends the wrong and injury when, &c. and prays oyer of the said writing obligatory, and it is read to him in these words [the bond without condition] ; which being read and heard, the said defendant says, that the said G. S. in the said writing obligatory named, duly sealed and executed the said writing obligatory, and thereby became jointly bound with the said defendant to the plaintiff, to wit, on the same day and year, at London aforesaid: wherefore, inasmuch as the said G. S. is not named in the said writ, the said defendant prays judgment of the said writ, and that the same may be quashed.

The defendant became bound to the plaintiff and another; and because it is not shown whether the other be living or dead, 1. Bro. 4. this is the only way to take advantage of the matter; for if he pleads *non est factum*, it will be against him; so on demurrer, for the Court will not presume that the other defendant executed. 1. Stra. 303.

AND the said defendant, in his proper person, comes and defends the wrong and injury, and says, that the said plaintiff, in Michaelmas Term, in the tenth year of the reign of our lord the present king, for the recovery of his damages by reason of the not performing the said promise in the said declaration mentioned, did prosecute out of the said court of our lord the king, before the king himself, the said court then and still being at Westminster, in the county of Middlesex, a certain original writ of our said lord the king of attachment of privilege against the said defendant, directed to the sheriff of Middlesex, whereby the said sheriff was commanded that he should attach the said defendant if he should be found in his bailiwick, and that he should safely keep him, so that he should have his body before the said lord the king at Westminster, on Saturday next after eight days from the day of St. Hilary, to answer to the said plaintiff, gent. being one of the attorneys of the king's bench, before the king himself, according, &c. in a plea of trespass, and also to a bill for fifty pounds upon promises, and that the said sheriff should have then there that writ; which said writ the said plaintiff afterwards, and before the return thereof, that is to say, on, &c. at Westminster aforesaid, delivered to one A. B. and C. D. esquires, then being sheriff of Middlesex, to be executed in due form of law; at which day of the return of the said original writ, that is to say, on Saturday, &c. [as before] came the said plaintiff, and the said defendant also appeared in the said court here to answer to the said plaintiff, according to the exigency of the said writ; and the said sheriff, to wit, A. B. and C. D. did return, that by virtue of the said writ to him directed he had taken the said defendant, whose body he had ready, as by the said writ and the return thereof in the court of our said lord the king, before the king himself here, to wit, at Westminster aforesaid, remaining of record, more fully appears; and the said defendant further saith, that the said original writ of privilege of attachment prosecuted as aforesaid by the said plaintiff,

Plea, that the defendant was bound jointly with another, who is living, not named.

Plea, that the original was sued out before the cause of action accrued. Clift. 10. 19.

was prosecuted by the said plaintiff with an intent to implead the said defendant for the cause of action in the said declaration mentioned above specified, to cause him to appear in the said court here, and to declare against him for the cause of action above named, according to the course and custom of the said court; and that the said plaintiff, according to such his intention, afterwards, to wit, in the said Hilary Term, did declare by bill against him in manner and form aforesaid; and the said defendant further says, that the said cause of action in the said declaration mentioned did not accrue to the said plaintiff at any time before the suing out of the said original writ of privilege of attachment; and this he is ready to verify: wherefore he prays judgment of the said writ and declaration thereupon, and that the same may be quashed.

Demurrer.

And the said plaintiff prayeth a day to imparl to the said plea, and it is granted to him, &c.; and thereupon a day is given to the parties aforesaid to come before our lord the king at Westminster until Wednesday next after fifteen days from the day of Easter, that is to say, for the said plaintiff to imparl to the said plea, and then to reply to the same, &c.: at which day as well the said plaintiff in his proper person as the said defendant by his attorney do come before our lord the king at Westminster; and the said plaintiff saith, that the plea aforesaid by the said defendant in manner and form aforesaid, and the matters therein contained, are not sufficient in law to quash the said bill of the said plaintiff, and that the said plaintiff is not under any necessity, nor in any wise bound by the law of the land, to answer the said plea, in manner and form aforesaid pleaded; and this, &c.: wherefore, for want of a sufficient plea in this behalf, the said plaintiff prays judgment, and that the said bill may be adjudged good, and that the said defendant may answer thereto, &c.

Joinder is demurrer.

And the said defendant saith, that the aforesaid plea in manner and form by him the said defendant above pleaded, and the matters therein contained, are good and sufficient in law to quash the said bill of the said plaintiff, which said plea, and the matters therein contained, the said defendant is ready to verify and prove as the Court shall award; and because the said plaintiff hath not answered the said plea, nor hitherto in anywise denied the same, the said defendant, as before, prays judgment, and that the said bill of the said plaintiff may be quashed: but because the court of our lord the king now here is not yet advised about giving judgment of and upon the premises, day is thereupon given to the parties aforesaid to come before our lord the king at Westminster until Friday next after the morrow of the Holy Trinity, to hear judgment of and upon the same premises, for that the court of our said lord the king now here is not yet advised thereof, &c.: at which day, before our lord the king at Westminster, come as well the said plaintiff in his proper person as the said defendant by his attorney; and because the said court of our said lord the king, before the king himself,

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are not yet advised among themselves what judgment to give in the premises, a day is further given to the parties aforesaid to be before our lord the king at Westminster until on Monday next after three weeks from the day of St. Michael, to hear judgment of and upon the premises, because that the court now here are not yet advised, &c. : at which day, before our lord the king at Westminster, came as well the said plaintiff as the said defendant by his attorney aforesaid; and thereupon the premises aforesaid being seen and inspected by the court here, and by them fully understood, and mature deliberation being thereupon had, it seems to the court, that the said plea of the said defendant, and the matter therein contained, are not sufficient in law to quash the said bill of the said plaintiff, or to hinder this court from giving cognizance of the said plea. Therefore it is considered, in and by the said court here, that the said defendant do answer over the said bill of the said plaintiff; and hereupon the said defendant, by E. F. his attorney, comes and defends the wrong and injury, &c. and says, that he did not undertake and promise in manner and form as the said plaintiff hath above complained against him; and of this he puts himself upon the country, &c.

Judgment, *respondeat ouster*.

AND the said defendant comes and defends the wrong and injury, and prays judgment of the said writ, because he says, that the said A. on, &c. at the parish aforesaid, died intestate; after whose death administration of all and singular the goods and chattels which were belonging to the said A. at the time of his death since the decease of the said A. that is to say, on, &c. was in due manner committed to the said plaintiff, to wit, at the parish aforesaid; without this, that the said plaintiff is executor of the last will and testament of the said A. B. as the said plaintiff by his said writ and declaration above supposes; and this he is ready to verify: wherefore, since the said plaintiff by his said writ is not named administrator of the goods and chattels which were of the said A. B. the said defendant prays judgment of the said writ, and that the same may be quashed.

Plea, that the plaintiff is administrator, and traverses that he is executor.

AND the said D. by E. F. his attorney, comes and defends the force and injury when, &c. and prays judgment of the said bill, because he says, that the said plaintiff, neither at the said times when, &c. nor ever since, hath not nor had anything in the said close in which, &c. nor in the said trees and underwood in the said bill mentioned to be there growing, nor in any of them, nor any part thereof, nor in the said goods and chattels in the said bill mentioned, nor in any of them, nor in any part thereof, but jointly and undividedly with A. B. and C. D. esquires, who are both still alive, to wit, at S. aforesaid; and this, &c. : wherefore, inasmuch as the said A. B. and C. D. are not named in the said bill, he prays judgment of the said bill, and that the same may be quashed.

Plea in trespass, that the plaintiff and another were joint tenants. For tenant in common with another, see 1. Bro. 8. Hanf. 103. Replication, that the plaintiff was sole seised, and traverses the other having any thing.—Raft. 653. 1. Bro. 8. Hanf. 103.

Plea, that the promises were by the defendants and one A. B. and that the said A. B. is still alive. **AND** the said R. W. and J. by S. C. their attorney, come and defend the wrong and injury, and pray judgment of the writ aforesaid, because they say, the several promises and undertakings in the said declaration mentioned, if any such were made, were, and each and every of them was, made by the said R. W. and J. and one Sir W. F. and J. S. jointly, to wit, at London aforesaid, in the parish and ward aforesaid, which said Sir W. F. and J. S. are still alive, to wit, at London aforesaid, in the parish and ward aforesaid; and this they are ready to verify: wherefore, since the said Sir W. F. and J. S. are not named in the said writ, the said R. W. and J. pray judgment of the said writ, and that the same may be quashed.

THOMAS DAVENPORT.

Discontinuance. **AND** hereupon the said P. as to the said plea of the said defendant, says, that he cannot deny the exception aforesaid made by the said defendant to the said bill, but confesses it to be true; therefore it is considered, that the said P. shall take nothing by his bill aforesaid so exhibited against the said D. as aforesaid, but shall be in mercy for his false claim as to the said D. thereon, and that the said D. shall go thereon without day.

N. B. The defendant pleaded in abatement, that his name was J. and not D, on which the plaintiff discontinued as above.

Nolle prosequi to a plea in abatement. **AND** hereupon the said plaintiff says, that he cannot deny the exceptions aforesaid made by the said defendant to the said bill, but confesses it to be true, and prays leave to exhibit a better bill against him, and it is granted to him, &c.: therefore it is considered, that the said plaintiff shall take nothing by his said bill so exhibited as aforesaid, but shall be in mercy for his false claim therein; and the said P. shall go thereupon without day, &c.

Plea to the jurisdiction, that the cause of action arose in Wales. **AND** the said defendant, by A. B. his attorney, comes and defends the force and injury, &c. and saith, that the said county of Glamorgan is one of the twelve counties within the principality or dominion of Wales, within which said county there now is, and at the time of the exhibiting of the bill of the said plaintiff, and long before that time was, a certain court of our lord the king of great sessions, holden for the said county of Glamorgan before certain justices of the same court there, and that all and singular pleas and actions, as well real as personal, arising within the same county are, and at the time of exhibiting the bill of the said plaintiff were, and of right ought to be, pleaded and pleadable within the said county of Glamorgan, before the said justices of the said court of great sessions there for the time being, and not here in the court of our lord the king before the king himself; and that the said defendant, at the time of exhibiting the said bill of the said plaintiff, and before, was, and from thence hitherto hath been, and still is, resident

resident and commorant within the same county, to wit, at Cow-bridge aforesaid, in the county aforesaid ; and this, &c. : wherefore, since the cause of action aforesaid arises within the said county of Glamorgan, within the principality or dominion of Wales, the said defendant prays judgment if the court of our lord the king now here will or ought to have further cognizance of the plea aforesaid.

J. LEE.

AND the said defendant, in his proper person, comes and says, Plea, that the cause of action arose out of the jurisdiction. that the Court ought not to have further cognizance of the plea aforesaid, because he says, that the cause of action aforesaid, if any, accrued to the said plaintiff out of the jurisdiction of this court, to wit, at T. in the county of N. and not at D. in the declaration named, or elsewhere within the jurisdiction of this court ; and this, &c. : wherefore he prays judgment if this court ought or will have cognizance of the plea aforesaid.

AND the said defendant, in his proper person, comes and defends Plea, that all pleas for the recovery of lands within the county palatine of Chester ought to be before the justices there. the force and injury, &c. and says, that the court of Chester is, and from time whereof the memory of man is not to the contrary hath been, a county palatine ; and that there now are, and for all the time aforesaid have been, justices there ; and that all and singular pleas for the recovery of the possession of manors, messuages, lands, and tenements, lying and being within the same county, have been for all the time aforesaid pleaded and pleadable within the said county of Chester, before the justices there for the time being, and not here in the court of our lord the king, before the king himself ; and this he is ready to verify, as the Court, &c. : wherefore, since the plea aforesaid is brought for the recovery of manors, messuages, lands, and tenements aforesaid, within the county palatine, the said defendant prays judgment if the court of our lord the king will or ought to have further cognizance of the plea aforesaid.

E. BOOTLE.

AND now come as well the aforesaid T. as the aforesaid I. in Plea in abatement of variance between the writ and specialty. their proper persons ; and because the aforesaid T. is named and called in a certain writing obligatory against the aforesaid I. brought here into court (by which said writing the aforesaid I. is bound to the aforesaid T. in the aforesaid one hundred pounds, to be paid in a certain term in the same writing contained), by the name of I. K. of L. mercer ; and in the writ aforesaid the said T. is named and called by the name of T. H. &c. ; and so there is a variance between the writ aforesaid and the said writing obligatory ; upon which writing the aforesaid writ was sued out : therefore it is considered, that the aforesaid T. take nothing by his writ aforesaid, but that he be in mercy, &c. for this false claim ; and that the aforesaid I. do go thereof without day, &c. ; and that the letters patent of

our lord the king for pardoning the outlawry promulged against him the said I. by occasion of the premises be allowed to the said I. &c. &c.

Plea in abatement of variance between the writ and specialty after *oyer*.

WHICH being read and heard, the said defendant says, that the writ afore said is variant from the writing afore said, forasmuch as the said defendant is named in the said writing, "John C. jun. of New Sarum;" which words, "jun. of New" are omitted in the writ afore said; and so that writ is not warranted by the writing afore said: wherefore the defendant prays judgment of that writ, &c.

Plea in abatement of variance between the writ and testament, in debt by an *executor*.

THE defendant says, that the afore said testator is named in the writ afore said T. G. late of Dundee, and in the testament afore said he is named T. Dodsyne, of the parish of Dundee; and so the writ afore said is variant from the testament afore said, and is not at all warranted by the same: wherefore he prays judgment of the said writ, &c.: and hereupon as well the writ as the testament afore said being seen by the Court, the exception afore said is found to be true: therefore it is considered that the afore said plaintiff take nothing by his writ afore said, but that he be in mercy for his false claim, and that the afore said defendant do go thereof without day, &c.

Plea in abatement of variance between the original and specialty.

AND the afore said defendant, by A. B. his attorney, comes and prays judgment of the writ afore said, because he says, that there is a variance between the writing afore said brought here into court and the original writ sued out upon the said writing; because, he says, that the said defendant is named and called by that writing K. B. of T.; and this he is ready to verify: wherefore, inasmuch as there is a variance between the writ afore said and the writing afore said upon which the afore said writ was sued out, he prays judgment of the said writ, &c.

Another after *oyer*.

WHICH being read and heard, the defendant prays judgment of the writ afore said, because he says, that in the afore said writing obligatory, upon which the writ afore said was sued out, he is named and called by the name of J. G. of S. in the county of N. clerk, and in the writ afore said the said J. is named and called by the name of G. G. of B. in the county of S. clerk; and so there is a manifest variance between the writ afore said and the afore said writing obligatory upon which that writ was sued out; and this, &c.; wherefore, &c.

AND

AND the aforesaid defendant, by T. S. his attorney, comes and defends the force and injury when, &c. and craves oyer of the plaint aforesaid, and it is read to him in these words, to wit, "T. B. complains of R. K. &c. of a plea that he render to him ten pounds, which, &c. ; and there are pledges of prosecuting, &c." [as in the plaint] : which being read and heard, the plaintiff prays judgment of the declaration aforesaid, because he says, that there is a material variance between the plaint and declaration aforesaid, as appears to the court here ; and this, &c. : wherefore, on account of that variance, the said defendant prays judgment of the declaration aforesaid, &c.

Plea in abatement for variance between the plaint and declaration.

AND the aforesaid defendant, by T. S. his attorney, comes and defends the force and injury when, &c. and prays judgment of the bill aforesaid now exhibited against him, because he says, that by the said bill it appears that the said plaintiff complains of several and distinct causes of action, when by the law of the land the said plaintiff ought to have exhibited several bills for the said causes of action respectively, and not one bill only for all the causes of action aforesaid together ; and this the said defendant is ready to verify : wherefore, inasmuch as the said plaintiff hath above joined in one and the same bill many causes of action not joinable, the said defendant prays judgment of the said bill, &c.

Plea in abatement for the joinder of other inconsistent causes of action in one bill.

AND the aforesaid defendant, present here in court, defends the force and injury when, &c. and prays judgment of the bill aforesaid now exhibited against him, because he says, that by the said bill it appears that the aforesaid plaintiff complains of two several and distinct trespasses depending upon two several titles to two several and distinct offices, whereas the aforesaid plaintiff ought to have exhibited two several bills for the same trespasses respectively, and not one bill only for both the causes of action aforesaid together ; and this he is ready to verify ; wherefore, inasmuch as the said plaintiff hath above joined in one and the same writ two causes of action not joinable, the said defendant prays judgment of the said bill, &c.

Similar plea where the causes of action depend on two several titles.

AND the aforesaid J. C. by J. G. his attorney, comes and defends the force and injury when, &c. and prays judgment of the bill aforesaid, because he says, that by the bill aforesaid it appears that the aforesaid J. C. is chargeable by virtue of the promises and undertakings in the said bill mentioned, in a plea of account, as bailiff of the said J. P. senior ; and for this, that the bill aforesaid is in a plea of trespass upon the case, the aforesaid I. prays judgment of the bill aforesaid, and that that bill may be quashed.

Plea in abatement, that the bill is in case which ought to be in account.

Plea in abatement in appeal of murder for misnaming the parish,

THE defendant craves oyer of the original writ, and it is read to him : he also craves oyer of the return, which was, that the sheriff had attached the defendant by his body, but he was removed by a habeas corpus into the king's bench, so that he could not have his body at the day of the return of the writ aforesaid ; which being read and heard, the said G. W. by A. B. his attorney, defends the force and injury when, &c. and all the felony, and whatsoever, &c. and prays judgment of the original writ aforesaid, because he says, that he the said G. W. by that writ is appealed by the name of G. W. late of the parish of St. James's, Westminster, in the county of Middlesex, gent. when in truth and in fact within the county of Middlesex aforesaid there is a certain parish called and known by the name of the parish of St. James's, within the liberty of Westminster, but in the said county of Middlesex there is not, nor on the day of suing out the original writ of appeal aforesaid, nor ever was there, any parish, town, or place, called and known by the name of the parish of St. James, Westminster, only, as the aforesaid Elizabeth, by her writ aforesaid, above supposes ; and this he the said G. is ready to verify : wherefore he prays judgment of the writ aforesaid, and that the writ aforesaid may be quashed.

Demurrer and judgment.

And the aforesaid Elizabeth demurred generally to the plea in abatement ; and this, &c. : wherefore, for want of a sufficient answer in this behalf, the said Elizabeth prays judgment against the aforesaid G. W. of and upon the premises, and that that writ may be adjudged good ; and the said G. W. &c. to quash the writ [as in other rejoinders], and that that writ may be quashed.

Plea in abatement for not distinguishing the vill.

IN debt against J. B. of T. in the county aforesaid, yeoman, the defendant says, that in the county aforesaid there are two vills called T. and neither of them without addition, and that in the same county there never was a vill called T. only, as the aforesaid plaintiff, by his writ aforesaid, above supposes ; and this, &c. : wherefore he prays judgment of that writ, &c. : and the plaintiff maintains the writ, &c. : therefore let twelve of the body of the county, &c. &c.

Plea in abatement for naming the defendant of a place which is no vill.

AND the aforesaid R. W. of Epping, in the county aforesaid, husbandman, in his proper person, says, that on the day of suing out the writ aforesaid he was commorant and conversant at the vill of Epping, in the county aforesaid, and that he is the same person against whom the aforesaid T. brought his writ aforesaid by the name of R. W. of I. ; and he defends the wrong and injury when, &c. and says, that the aforesaid place called I. in the aforesaid vill of Epping, is no vill or hamlet of itself, nor any place out of a vill or hamlet ; and this he is ready to verify ; in which case the said R. ought to have been named in the writ aforesaid of the aforesaid vill of Epping ; wherefore, since he is not so named, according to the form of the statute

statute of Additions of the degree or mystery of defendants in writs wherein process of outlawry lies, he prays judgment of the writ aforesaid, &c.

THE defendant says, that he on the day of suing out the writ aforesaid was commorant and converfant at B. in the county of S. ; without this, that he ever was commorant or converfant at B. aforesaid, as by the writ aforesaid is supposed ; and this, &c. : wherefore he prays judgment of that writ, &c. [The defendant demurred in law, and judgment was given for the defendant to answer over.

Plea in abatement for non-commorancy.

IN trespass at R. and C. the defendant says, that the place called C. is within the aforesaid vill of R. and parcel of the same vill ; and this, &c. The plaintiff denies the plea ; and this, &c.

That C. is parcel of R. in trespass as R. and C.

AND the aforesaid tenant, by A. B. his attorney, comes and says, that whereas by the writ aforesaid it is supposed that the messuages and shops aforesaid were given to the aforesaid Agnes, the daughter of John, in free marriage with the aforesaid William, the son of Richard, the descent is made by the said writ from them the said Agnes and William putting the name of the wife before that of the husband, when by the form, &c. the name of the husband ought to be put before that of the wife : wherefore, for defect of form, he prays judgment of the writ, &c.

Plea in abatement for putting the wife's name before the husband's.

And the aforesaid plaintiff not denying the exception aforesaid, for that and other causes in the aforesaid writ contained, prays licence to obtain a better writ ; and he hath it, &c. ; therefore it is considered, that the aforesaid plaintiff take nothing by his writ aforesaid, but that he be in mercy for his false claim, &c.

Confesses plea, and prays a better writ.

AND the aforesaid defendant, by B. A. his attorney, comes and says, that in the writ aforesaid the aforesaid plaintiff hath made an omission of this word, "by," between them the said J. H. and L. M. for which reason the writ aforesaid is defective and insufficient in itself ; wherefore he prays judgment of the writ, &c. : and because the exception aforesaid is manifest to the justices here, by inspection of the said writ ; therefore it is considered, that the aforesaid plaintiff take nothing by his said writ aforesaid, but that he be in mercy for his false claim, &c.

Plea in abatement for omitting a word in the writ, and judgment of *quassetur billa*.

THE defendant prays judgment of the writ, because he says, that in the aforesaid letters official it is contained, that administration of all the goods and chattels of W. C. otherwise P. was committed to the plaintiff at London aforesaid, and in the writ aforesaid there is an omission of the aforesaid words "otherwise P.:" wherefore

Plea in debt for an administrator in abatement.

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A B A T E M E N T.

it does not appear in or by the said writ but that the aforesaid W. in the writ aforesaid named, and the said W. in the letters aforesaid named, are different persons : wherefore he prays judgment of the writ aforesaid, &c.

Confesses the plea and judgment.

And because the aforesaid plaintiff does not deny the exception aforesaid (which sufficiently appears to the court here by the inspection and comparison of the writ and letters aforesaid) ; therefore it is considered, that the aforesaid plaintiff take nothing by his writ aforesaid, but that he be in mercy for his false claim, and that the aforesaid defendant do go thereof without day, &c.

Or confesses them.

And hereupon as well the writ as the letters aforesaid being seen by the Court, the said exception is found true : therefore it is considered, &c.

Plea of property in a stranger.

AND the aforesaid T. F. by A. B. his attorney, comes and defends the force and injury when, &c. and prays judgment of the aforesaid writ, because he saith, that the property of the aforesaid three cows in the declaration aforesaid specified, at the said time when, &c. was in one C. D. ; without this, that the property of the said cows, at the same time when, &c. was in the aforesaid E. T. as by the writ aforesaid is above supposed ; and this, &c. ; wherefore he prays judgment of the writ aforesaid, &c.

Plea in abatement, that one of the defendants died before the writ.

AND the aforesaid B. by C. D. his attorney, comes and says, that he is in no wise guilty of the trespass aforesaid, as the aforesaid plaintiff above complains against him : for plea he says, that the aforesaid A. one of the defendants, is dead, and that he died before the suing out of the aforesaid writ of the aforesaid plaintiff, to wit, at M. in the county aforesaid ; and this he is ready to verify ; wherefore he prays judgment of the writ aforesaid, &c.

Replication thereto.

And the aforesaid plaintiff says, that the writ aforesaid, for the reason above alledged, ought not to be quashed, because he says, that the aforesaid A. on the day of suing out the writ aforesaid, to wit, on, &c. at, &c. was living and in full life, and was not dead, as the aforesaid defendant hath above alledged ; and this he prays may be enquired of by the country, &c.

Plea, that the plaintiff died prior darrain continuance.

AND the aforesaid A. B. by C. D. his attorney, comes and defends the force and injury when, &c. and saith, that after the last continuance of the writ aforesaid, to wit, the octave of St. Hilary last past, from whence the process was continued here until this day, to wit, fifteen days from the day of Easter, and before this day, the aforesaid plaintiff died, to wit, at K. in the county of S. ; and this

this he is ready to verify : wherefore he prays judgment of the writ aforesaid, &c.

And the aforesaid attorney, in the name of the aforesaid plaintiff, and for him the said plaintiff his client, saith, that his writ aforesaid, for the reason above alledged, ought not be quashed, because he saith, that the said plaintiff is living and in full life, to wit, at, &c. and not dead, as the aforesaid defendant above alleges ; and this, for the said plaintiff his client, he prays may be enquired of by the country, &c.

Replication
thereto, and
issue.

AND the said P. by J. S. his attorney, comes and defends the force and injury when, &c. and saith, that he ought not to be obliged to answer to the said bill of him the said W. because he saith, that at the delivery of the gaol of our lord the king, of Newgate, holden for the county of Middlesex, at Justice Hall in the Old Bailey, in the suburbs of the city of London, on Wednesday the sixth day of December, in the twenty-sixth year of the reign of our sovereign lord George the Second, king of Great Britain, before Sir C. G. knight, mayor of the city of London, E. C. esquire, one of the barons of the Court of Exchequer of our said lord the king ; H. L. esquire, one other of the barons of the said Court of Exchequer of our said lord the king ; Sir H. M. knight, one of the aldermen of the city of London, and others their fellows, justices of our said lord the king, assigned to deliver his gaol of Newgate of the prisoners therein being, the said W. by the name and addition of W. Lee, late of the parish of St. George, in the county of Middlesex, labourer, according to due course of law in that behalf duly taken, was tried and duly convicted upon an indictment, for that he, on the twenty-fifth day of November, in the twenty-sixth year of the reign of our sovereign lord George the Second, king of Great Britain, &c. with force and arms in the parish aforesaid, in the county aforesaid, one silver watch of the value of three pounds, of the goods or chattels of one W. H. thirteen pieces of foreign gold coin, called thirty-six shilling pieces, of the value of twenty-three pounds eight shillings ; one piece of gold coin of the proper coin of this kingdom called a guinea, of the value of twenty-one shillings ; one piece of gold coin of the proper coin of this kingdom called a half guinea, of the value of ten shillings and sixpence ; and ten shillings in monies numbered, of the monies of one E. W. widow, in the dwelling-house of the said E. then and there being found, feloniously did steal, take and carry away, against the peace of our said lord the king, his crown and dignity. And the said P. further saith, that afterwards, to wit, at the delivery of the gaol of our said lord the king, of Newgate, holden for the said county of Middlesex, at Justice Hall aforesaid, on Wednesday the second day of May, in the twenty-sixth year aforesaid, before Sir C. G. knight,

Plea in abatement to the person convicted of felony.

knight, mayor of the city of London; Sir W. L. knight, Chief Justice of our said lord the king, assigned to hold pleas before the king himself; Sir E. C. knight, one of the justices of our said lord the king of the Court of Common Pleas; H. L. esquire, one of the barons of the Court of Exchequer of our said lord the king, and others their fellows, justices of our said lord the king, assigned to deliver the gaol of Newgate of the prisoners therein being, our said lord the king having been graciously pleased to extend his royal mercy to the said W. L. on condition of transportation to some parts of America for the term of seven years, which had been signified by one of his Majesty's principal secretaries of state to the said justices and court there, according to the statute in that behalf; and which mercy, upon condition aforesaid, the said W. L. then and there in the said court did consent and agree to accept; whereupon it was by the same court then and there considered, that the said W. L. should be transported to some of his Majesty's colonies and plantations in America for the term of seven years, according to the form of the statute in such case made and provided, as by the record thereof may more fully appear; which said judgment yet remains in its full force and effect by the said William, not reversed or annulled, and which said term of seven years for which the said William was so adjudged to be transported is not yet expired; and this he the said P. is ready to verify by the said record: wherefore he prays judgment whether he ought to be compelled to answer to the said bill, &c.; with this, that the said P. will verify that the said W. L. in the said record mentioned, and the aforesaid William, the now plaintiff in the said bill mentioned, is one and the same and not another and different person, &c.

Replication
thereto.

Protests of let-
ters patent.

And the said W. as to the said plea of the said P. by him above pleaded in bar, says, that he, by any thing in that plea contained, ought not to be barred from having his aforesaid action maintained against the said P. because he says, that long after the said conviction was so had against the said William, and before the day of the exhibiting of the bill of the said William, to wit, on the seventh day of April, in the thirty-second year of the reign of our sovereign lord the now king, our said lord the now king by his letters patent bearing date at Westminster the same day as the last aforesaid, sealed with his great seal of England, and which said letters patent he the said W. brings here into court, acquitted, released, and discharged the said W. his heirs, executors, and administrators, against our said lord the king, his heirs and successors, of and from the said felony in the said plea mentioned, and of and from all manner of treasons, felonies, misprison of treasons and felonies, treasonable or seditious words or libels, seditious and unlawful meetings and conventicles and all offences by reason whereof the said W. could be charged with the penalty and danger of a præmunire, all riots, routs, offences, contempts, trespasses, misdemeanors, and all judgments and con-

convictions for not going to church, and of and from all forfeitures and penalties for the same, or either of them, before had committed or done; and the will and pleasure of our said lord the king was by the said letters patent expressed to be, that the said W. his heirs, executors, or administrators, should *not be* sued, vexed, or disquieted in his body, goods, or chattels, lands or tenements for the said felony or the conviction aforesaid, or for any matter, cause, contempt, misdemeanor, forfeiture, offence, or any other thing before done, committed, or omitted against our said lord the king, his crown, dignity, prerogative, laws, and statutes; and that the said grant of our said lord the king of general pardon by general words, clauses and sentences in the same letters patent before rehearsed, should be reputed, esteemed, adjudged, expounded, allowed and taken in all the courts of our said lord the king, most beneficially and amply for the said W. and as if the particular crimes of the said W. had been fully and at large mentioned and expressed in the same letters patent, as by the said exemplification of the said letters patent more fully appears; and the said W. further saith, that the several causes of action in the said declaration mentioned did accrue, and each and every of them did accrue after the said conviction in the said plea mentioned, and before the granting of the pardon aforesaid by our said lord the king, to wit, on the seventh day of April, anno domini 1756, at L. aforesaid, in the parish and ward aforesaid; and this he is ready to verify: wherefore he prays judgment and the damages, &c. so adjudged to him, &c.

AND the said E. by S. P. his attorney, comes and defends the wrong and injury, &c. and prays judgment of the said writ and declaration, because he says, that long before the suing out of the original writ of the said D. as administratrix as aforesaid in this behalf, to wit, on the first day of October, anno domini 1778, and long before the said George W. deceased in his life-time was a trader within the true intent and meaning of the several statutes made and now in force concerning bankrupts or some one of them, to wit, at L. aforesaid, in the parish and ward aforesaid; and the said E. further says, that the said G. W. in his life-time, afterwards, to wit, on the seventh day of November, anno domini 1778 aforesaid, being and remaining such trader as aforesaid, became and was a bankrupt within the true intent and meaning of the several statutes made and now in force concerning bankrupts, or some or one of them, to wit, at L. aforesaid, in the parish and ward aforesaid; and that afterwards, that is to say, on the second day of November, anno domini 1778 aforesaid, a certain commission of bankrupt of our lord the now king, sealed with the great seal of Great Britain, bearing date at Westminster the day and year aforesaid, was in due manner awarded and issued against the said G. W. in his life-time; whereupon the said

Plea in abatement, and the writ and declaration that plaintiff's testator was a bankrupt, and never obtained his certificate.

G. W.

A B A T E M E N T.

G. W. in his life-time afterwards, to wit, on the same day as the last aforesaid, at L. aforesaid, in the parish and ward aforesaid, was by the major part of the commissioners in the said commission named and authorized, duly declared bankrupt, and afterwards, to wit, on the eighteenth day of October, anno domini 1781, at L. aforesaid, in the parish and ward aforesaid, died without ever having obtained his certificate under the said commission; and this the said E. is ready to verify: wherefore he prays judgment of the said writ and declaration aforesaid, and that the same may be quashed.

Plea, that the plaintiff had nothing in the close in which, &c. but in common with A. B.

AND the said defendant, by A. B. his attorney, comes and defends the force and injury, and prays judgment of the said bill, because he says, that the said M. and E. neither at the said time when, &c. nor ever since had nor have any thing in the said close in which, &c. or in the said trees and underwood in the said bill mentioned to have been growing there, nor in any of them or in any part thereof, nor in the said goods and chattels in the said bill mentioned, or in any part thereof, but jointly and undivided with A. B. and B. T. who are both still alive, to wit, at, &c. and this, &c.: wherefore, inasmuch as the said A. B. and B. T. are not named in the said bill, he prays judgment of the said bill, and that the same may be quashed, &c. R. DRAPER.

Plea to the jurisdiction of the court.

AND the said B. in his proper person, comes and says, that the said court ought not to have further cognizance of the plea aforesaid, because he says, that the cause of action aforesaid (if any accrued to the said A.) accrued to the said A. out of the jurisdiction of this court, to wit, at A. in the county of B. and not at L. in the said declaration mentioned, or elsewhere within the jurisdiction of this court; and this, &c.: wherefore, &c. if the said court can or will have further cognizance of this plea.

Plea, that defendant is a priest in holy orders, and not a yeoman.

AND the said defendant comes and defends the wrong and injury when, &c. and prays judgment of the said writ, because he says, that the said defendant at the time of obtaining the original writ of the said plaintiff in this cause, and before and continually afterwards till this time was and is a priest in holy orders duly constituted, to wit, at, &c. and not a yeoman; without this, that the said J. D. is, or at the day of obtaining the said writ or ever since, was a yeoman, as by the said writ is above supposed; and this, &c.: wherefore he prays judgment of the said writ, and that the same may be quashed. J. EYRE.

AND

BOWERBANK } AND now at this day. that is to say, *Plea in abate-*
against } Tuesday next, after eight days of St. Hilary *ment to the ju-*
WALKER. } in this same Term, until which day the said *risdiction, a*
J. W. and T. C. had leave to imparl to the said bill, and then *custom to*
to answer the same, &c. as well the said T. B. and Samuel by *count upon a*
their said attorney, as the said James and T. C. in their own per- *concessit solvere in*
sons, do come before our said lord the king at Westminster, and *the mayor's*
the said James and T. C. say, that the city of London is, and *court in London,*
from time immemorial hath been, an antient city, and that there *when the debt*
now is, and time immemorial hath been, a certain custom used *is not a special-*
and approved within the same city, that is to say, that if any *ty.*
person be indebted to any other person within the same city in any
sum of money upon simple contract, without specialty made be-
tween such persons within the said city, that such persons to whom
such sum of money was due and owing, may and can have and
maintain an action of debt by original bill in the king's majesty's
court, holden before the mayor and aldermen of the city of
London, for the time being, in the chamber of the Guildhall
within the same city, according to the custom of the said city, a-
gainst such persons so indebted, for the recovery of such sum of
money so due and owing as aforesaid, and shall and may, in such
original bill, count upon a *concessit solvere*, that is to say, the
grant and agreement of persons indebted to pay such sum of mo-
ney so due and owing as aforesaid, without setting forth the spe-
cial matter of such simple contract; which said custom, and all
other customs of the said city obtained and used from the time
aforesaid, by the authority of parliament held at Westminster in
the second year of the reign of King Richard the Second, late
King of England after the Conquest, to the mayor and common-
alty and citizens of the said city, and their successors, ratified and
confirmed; and the said James and T. C. further say, that hereto-
fore, to wit, on the tenth day of November, in the twenty-sixth
year of the reign of our sovereign lord George the Third, now
king of Great Britain, in the court of our said lord the king,
held before T. W. esquire, then mayor, and the aldermen of the
said city, in the chamber of the Guildhall within the said city, ac-
cording to the custom of the said city, the said T. B. and Samuel
affirmed a certain original bill against the said James and T. C.
surviving partners of P. Q. deceased, in a plea of debt of five
hundred pounds, upon demand, of lawful money of Great Britain,
for the recovery of the said sum of five hundred pounds supposed
to be due to the said T. B. and Samuel from the said James and
T. C. as surviving partners as aforesaid, upon simple contract
without specialty made between the said James and T. C. and
the said P. Q. in his life-time; and the said T. B. and Samuel
within the said city, and the said James and T. C. say, that after
the affirmance of the said bill original, the said bill was removed
from and out of the said court before the mayor and aldermen
aforesaid, into the court of our said lord the king, before the king
him-

himself, by virtue of his majesty's writ of habeas corpus cum causa issuing out of the said last-mentioned court, and returnable therein immediately on the receipt whereof in Hilary Term now last past; and thereupon the said T. B. and Samuel have declared against the said James and T. C. in manner and form aforesaid, without the consent and agreement of the said James and T. C. and this, &c.: whereupon they pray judgment of the said declaration, and that the same may be quashed, &c. [A general demurrer to, and joinder.

S. SHEPHERD.

Judgment on
the above plea in
abatement of
respondens on-
der.

At which day, before our lord the king at Westminster, come as well the said plaintiffs as the said defendants, by their attorneys aforesaid, and upon which all and singular the premises being seen, and by the Court understood, and mature deliberation being thereunto had, for that it seems to the court of our said lord the king here, that the same plea by the said James and T. C. in manner and form aforesaid pleaded in abatement, and the matters therein contained, are not sufficient in law to quash the said declaration of the said T. B. and Samuel; therefore it is considered, that the said James and T. C. answer over to the said declaration, &c. And upon this the said James and T. C. by their said attorney, come and defend the wrong and injury when, &c. and say, that they did not undertake or promise in manner and form as the said T. B. and Samuel have in their said declaration above complained against them; and of this they put themselves upon the country, and the said T. P. and Samuel do the like: therefore, &c.

In making up the nisi prius record, I think it will be necessary to set out the declaration, plea in abatement, demurrer and judgment of respondeas oster, as the whole record must be shewn, other-

wise I think the defendant might, upon a writ of error being brought, assign for error variance between the judgment roll and the plea roll.

Drawn by Mr. GRAHAM.

A C C O U N T.

SOMERSETSHIRE, to wit: Robert Phillips, late of Partlock, in the county aforesaid, yeoman, was summoned to answer to William Clare, clerk, and Alice his wife, late Alice Phillips, widow, in a plea that he render to him his reasonable account for the time in which he was bailiff of the said Alice, whilst she was sole, and of the said William and Alice, in right of the said Alice, after their intermarriage, &c. And thereupon the said William and Alice, by William Lee their attorney, say, that whereas the said Alice and the said Robert, whilst she the said A. was sole, to wit, on the tenth day of March in the year of our lord 1740, and long before, and from thence continually until her intermarriage with the said William, held together and undivided, as tenants in common, a certain farm, consisting of a messuage and divers, to wit, thirty acres of land, ten acres of meadow, and sixty acres of pasture, with the appurtenances, commonly called and known by the name of West Haddon, otherwise Lower Haddon, in the parish of Winsford, in the county aforesaid, and the said Robert, during all the time aforesaid, had the care and management of the whole tenements, to receive and take the rents, issues, and profits thereof, and as bailiff of the said Alice, of what he received more than his just share and proportion thereof, to render a reasonable account thereof to the said Alice, when he should be thereunto required, according to the statute in such case lately made and provided: and although the said Robert, during all the time aforesaid, at the parish of Winsford aforesaid, hath received more than his just share and proportion thereof, to wit, the whole rents, issues, and profits of the said tenements, with the appurtenances, yet the said Robert, although often required, hath not rendered his reasonable account in this behalf unto the said Alice, whilst she was sole, nor to the said William and Alice, or to either of them, since their intermarriage, but hath hitherto refused, and still refuses, contrary to the form of the said statute. And also for this, that whereas the said William and Alice, in right of the said Alice and the said Robert, afterwards, to wit, on the twenty-fourth day of June, in the year of Our Lord 1743, and

Dedation in account by the husband and wife against their tenant in common as her bailiff whilst she was sole, for rent of an estate: ad count, for profits since the marriage.

4. Ann, c. 16, f. 27.

ad count, to render an account of what marriage.

defendant received more than his reasonable share of profits since the

ACCOUNT.

from thence continually hitherto, have held together and undivided, as tenants in common, the said tenements, with the appurtenances, and the said Robert, during all the time last aforesaid, had the care and management of the whole tenements, aforesaid, with the appurtenances, to receive and take the rents, issues, and profits thereof, and as bailiff of the said William and Alice, in right of the said Alice, of what he the said Robert received more than his just share and proportion thereof, to render a reasonable account to them, when afterwards he should be thereunto required, according to the form of the statute in such case made and provided: and although the said Robert, during all the time last aforesaid, at the said parish of Winsford, hath received more than his just share and proportion thereof, to wit, the whole rents, issues, and profits of the said tenements, with the appurtenances, yet the said Robert (although often requested) hath not rendered to the said William and Alice, nor to either of them, his reasonable account in this behalf, but hath hitherto refused, and still refuses, so to do, contrary to the form of the said statute, whereby the said William and Alice say that they are prejudiced, and have sustained damage to the value of one hundred pounds; and therefore they bring their suit, &c.

Declaration in
account by one
joint tenant, a-
gainst two
others, as his
bailiffs, for his
share of the
rents of an
estate, under the
statute 4. Anne,
c. 16. s. 27.

WILLIAM BROOKS, late of, &c. and **Jason Shepherd**, late of, &c. were summoned to answer to **Andrew Hartshorn** of a plea, that they render to him a reasonable account of the time that they were bailiffs of the said **Andrew** in **Crawley**, in the parish of **Witney** aforesaid, in the county aforesaid. And thereupon the said **Andrew**, by **James Jefferson** his attorney, says, that whereas the said **William** and **Jason**, on the first day of **May**, which was in the year of Our Lord 1756, and continually from thence until the sixth day of **May**, anno Domini 1761, were together jointly the bailiffs of the said **Andrew** for and during all the said time, taking and receiving all the issues and profits of one messuage or tenement, with the fulling mills, mill-stocks, and utensils thereto belonging, called and known by the name of **Crawley Mills**, and of a piece or parcel of meadow ground, called the **Ham**, containing by estimation two acres, and of seven acres of meadow ground, and of one acre and an half of meadow ground, and of one acre and an half of coppice, with the appurtenances, situate, lying, and being in **Crawley**, in the parish of **Witney** aforesaid, in the said county of **Oxford**, whereof the said **Andrew** and the said **William** and **Jason** were jointly possessed for a certain term of years, to the common profit of them the said **Andrew** and the said **William** and **Jason**, and to render a reasonable account thereof to the said **Andrew**, when they the said **William** and **Jason** should be thereunto required by the said **Andrew**: nevertheless the said **William** and **Jason** (although often requested) have not, nor hath either of them, rendered a reasonable account thereof to the said **Andrew**, but to render the same have, and each

of them hath, wholly denied, and still do, and each of them doth, deny to render him the same. Damages five hundred pounds, &c.

PEMBROKESHIRE, *ff.* John Campbell Hook, esquire, a debtor of our said lord the now king, cometh before the barons of the Exchequer, on the day of (in the usual Exchequer form) of a plea, that he render to the said John Campbell a reasonable account of the time wherein he was bailiff of the said John Campbell, in the parish of Angel, in the said county of Pembroke; for that whereas the said C. D. on the first day of January, anno Domini 1764, and from thence continually until the day of the exhibiting of the bill of the said John Campbell, was bailiff of the said John Campbell for a certain farm or tenement, consisting of divers, to wit, one messuage, two barns, two stables, two orchards, two gardens, one hundred acres of land, forty acres of pasture, forty acres of wood, forty acres of underwood, with the appurtenances, called Horn Farm, otherwise Horn Tenement, otherwise Court-house Farm, situate, lying, and being in the said parish of Angel, in the said county of Pembroke, for and during all the time taking and receiving the issues and profits thereof, and whereof the said John Campbell and the said C. D. were seised undividedly, as tenants in common, to wit, in their demesne as of fee, that is to say, the said John Campbell of one undivided moiety or half part thereof, and the said C. D. of the other undivided moiety or half part thereof, to the common profit of them the said John Campbell and the said C. D. and to render a reasonable account thereof to the said John Campbell, when he the said C. D. should be thereto afterwards requested; yet the said C. D. (although requested) hath not rendered any reasonable or other account thereof, or of any part thereof, for the time aforesaid, or for any part thereof, to the said John Campbell, but hath hitherto wholly refused, and still refuses, to render the same to him. Damages, &c.

LANCASHIRE, *ff.* John Slater complains of William Hill, being in the custody of the marshal of the marshalsea of our lord the now king, before the king himself, in a plea, that he render to him a reasonable account of the time that he was bailiff to the said John at Ribchester, in the county of Lancaster; for that whereas the said John and William heretofore, to wit, on the first day of January, in the year of Our Lord 1788, and continually from thence until the commencement of this suit, have held together, as joint-tenants, a certain tenement, consisting of [here describe the premises at the time of the demise by the defendant to the present tenant, with convenient certainty, as nearly as supposed to be set out in the lease]; and the said William, during all the time aforesaid, had the care and management of the whole of the said tenement, with the appurtenances, to receive and take the

Declaration in B. R. in account by one joint-tenant against another, for receiving more than his share of the rents of an estate See stat. 4. Anne, c. 16. s. 17. See Opinion *infra*.

rents, issues, and profits thereof, and as bailiff of the said John, of what he received more than his just share and proportion of the said rents, issues, and profits, to render a reasonable account thereof to the said John, when he the said William should be thereunto required, according to the statute in such case made and provided: and although the said William, during the time aforesaid, at Ribchester aforesaid, in the county aforesaid, hath received more than his just share and proportion, to wit, the whole of the said rents, issues, and profits of the said tenement, with the appurtenances, yet the said William, although often requested, hath not rendered his reasonable account in this behalf to the said John, but hath hitherto refused, and still refuses, to the damage of the said John of twenty pounds, and therefore he brings his suit, &c. Kledges, &c.

THO. BARROW.

Opinion upon the following case. Qn.

Whether a lease by Pye to the plaintiff and defendant of a tenement, and articles of co-partnership under seal, between plaintiff, defendant, and Pye, with a penalty of forty pounds, to compel their performance, upon the same sheet of paper, require one stamp or two? and what remedy has one joint-tenant against another who receives all the rents?

I Think the articles of agreement for the co-partnership are not binding upon the parties for want of a separate stamp; for one stamp will not be sufficient for two separate deeds, which the lease and articles certainly are in their own nature, and which they import to be by being complete in themselves under different seals of different dates, and differing in their subject matter. The only question therefore as to the validity of each will be, "Which was first executed?" And as the lease stands first upon the paper, is of a prior date to the articles, and is refer-

red to by them, I take it for granted that it was first executed: for these reasons I take the lease to be a good one; and if so, Slater and Hill are joint tenants of the premises thereby demised to them. And though Slater has not assented to the demise by Hill, and therefore is not bound by it, yet I think if he can prove that Hill has received any rent, he will be entitled to recover his share of it from Hill in an action of Account, by virtue of the statute of 4. Anne, c. 10. s. 27. I must observe however, that though the articles of co-partnership are not binding, the assignees of Pye will be entitled to share with Slater and Hill the stock in trade; for as to that, they became joint proprietors by the purchase of it jointly. As the articles are not stamped, I am of opinion neither of the parties can maintain an action against the other for the penalty contained in them: but they may be at any time made good by the payment of the penalty at the Stamp-office, and having them stamped.

THO. BARROW.

Declaration in account by plaintiff, an infant, by *prochein ami*, against defendant, for not accounting for the rents of lands which were held as tenants in common.

HEREFORDSHIRE, ss. Samuel Fincher v. John Warburton, &c. in a plea, that he render to him his reasonable account for the time in which he was bailiff of the said Samuel in the several parishes of H. and I. in the said county of H. And thereupon the said Samuel, by A. B. his attorney, who is admitted by the court of our lord the king here to prosecute for the said Samuel, who is an infant within the age of twenty-one years, as the next friend of the said Samuel, complains, for that whereas the said John,

John, and Margaret his wife, in right of the said Margaret and the said Samuel, and divers other persons whose names are to the said Samuel unknown, heretofore, to wit, on, &c. and long before, and from thence continually hitherto have held together as tenants in common certain premises, to wit, ten messuages, ten cottages, two hundred acres of land, one hundred acres of meadow, one hundred acres of pasture, and one hundred acres of wood, with the appurtenances, in the said several parishes of H. and I. in the county aforesaid, and the said John, during all the time aforesaid, had the care and management of the whole tenements aforesaid, to receive and take the rents, issues, and profits, and as bailiff of the said Samuel, of what he received more than his just share and proportion thereof, to render a reasonable account thereof to the said Samuel, and his share thereof, when he should be thereto requested, according to the statute in such case made and provided: and although the said John, during all the time aforesaid, at the several parishes aforesaid, hath received more than his just share and proportion thereof, to wit, the whole rent, issues, and profits of the said tenements, with the appurtenances, yet the said John, although often requested, hath not rendered a reasonable account to the said Samuel, but he so to do hath hitherto wholly refused, and still refuses, contrary to the form of the aforesaid statute. And whereas the said John and Margaret his wife, in right of the said Margaret, and the said Samuel heretofore, to wit, on, &c. and from thence continually hitherto have held together, as tenants in common, divers, to wit, two undivided five parts of certain other premises, to wit, ten other messuages, &c. with the appurtenances, in the said several parishes of H. and I. in the county aforesaid, and the said John, during all the time aforesaid, had the care and management of the whole of the said two undivided five parts of the tenements last aforesaid, to receive and take the rents, issues, and profits thereof, and as bailiff of the said Samuel, of what he received more than his just share and proportion thereof, to render a reasonable account to the said Samuel, when he should be thereto requested, according to the statute in such case made and provided: and although the said John, during all the time last aforesaid, at the several parishes aforesaid, hath received more than his just share and proportion thereof, to wit, the whole rent, issues, and profits of the said two undivided five parts of the said last-mentioned tenements, with the appurtenances, yet the said John, although often requested, hath not rendered such reasonable account to the said Samuel, but he so to do hath hitherto wholly refused, and still refuses, contrary to the form of the aforesaid statute. And whereas, &c. (this count the same as the last, only omitting what is in italic). And whereas the said John heretofore, to wit, on, &c. and from thence continually hitherto, at the said several parishes of H. and I. in the county aforesaid, was and hath been bailiff to the said Samuel of one undivided fifth part of certain other premises, to wit, ten other messuages, &c. with the appurtenances,

2d count as tenant in common of two undivided five parts in other premises, &c.

3d count.
4th count of one undivided fifth part of other premises.

tenances, in the said several parishes of H. and I. in the county aforesaid, and the rents, issues, and profits thereof, for and during all that time received and had, to render a reasonable account thereof to the said Samuel when he should be thereto requested; yet the said John, although often requested, hath not rendered a reasonable account to him the said Samuel, but he so to do hath hitherto wholly refused, and still refuses, to the damage of the said Samuel of two hundred pounds, and therefore he brings his suit, &c.

V. LAWES.

Declaration in account by executor of tenant in common for the issues and profits of three undivided fourth parts against defendant, as bailiff 1st count as executor. 2d. in his own right.

JOHN STILL, *executor of the last will and testament of N. S. his late brother, deceased*, complains of Simpson Still, being, &c. of a plea, that he render to the said John, *executor as aforesaid*, a reasonable account of the time during which he has been, *or was*, the bailiff of the said John, *or of the said N. in his lifetime*, in the several parishes of Cowdon and Eaton-bridge in the said county of K.; for that whereas the said Simpson, *in the lifetime of the said N. to wit. on, &c. and continually from thence until the time of exhibiting, &c. or until, &c. on which day the said N. died, to wit, at, &c.* was the bailiff of the said John, *or of the said Nicholas*, for and during all that time taking and receiving all the issues and profits of one barn, &c. with the appurtenances, called or known by the name of, &c. situate, standing, lying, and being in the several parishes of Cowdon and Eaton-bridge aforesaid, in the said county of Kent, whereof the said John, *or Nicholas*, and Simpson, *in the lifetime of the said Nicholas*, were seised in their demesne as of fee undividedly as tenants in common, to wit, the said John, *or Nicholas*, of three undivided fourth parts, and the said Simpson of the other undivided fourth part thereof, to the common benefit of them the said John, *or Nicholas*, and Simpson, and to render a reasonable account thereof to the said John, *or to the said Nicholas, in his lifetime*, when he the said Simpson should be thereunto requested; yet the said Simpson, although often requested, hath not rendered a reasonable account thereof to the said Nicholas *in his lifetime, or to the said John, executor as aforesaid, since the death of the said Nicholas*, but to render the same hath hitherto wholly refused, and still doth refuse, *to render the same to the said John, executor as aforesaid*, to the damage of the said John, *executor as aforesaid*, of I. [2d. count, omitting the words in italic] and therefore he brings suit, &c. [Profert in curia of the letters testamentary] Pledges.

Declaration by husband and wife, against a tenant in common with the wife, of a copyhold estate.

DURHAM, ss. John Hunter, and Elizabeth his wife, complain of John Lunley, being in the custody of the marshal of the marshalsea of our sovereign the now king, before the king himself,

self,

self, of a plea, that he render to the said John, and Elizabeth his wife, a reasonable account of the time wherein he was bailiff to the said John H. and Elizabeth his wife, at Ryton in the said county of Durham; for that whereas the said John Luisley, on the second day of February, *anno Domini* 1768, was bailiff of the said John Hunter and Elizabeth his wife of three messuages, three cottages, and two acres of land, with the appurtenances, situate and being at Ryton aforesaid, within the manor of Chester, in the said county of Durham, and parcel of that manor, for and during all that time taking and receiving the issues and profits thereof, and whereof the said John Hunter and Elizabeth his wife, in right of the said Elizabeth, and the said John Luisley, were individually, and as tenants in common, seised, to wit, in their demesne as of fee at the will of the lord, according to the custom of the said manor, that is to say, the said John Hunter and Elizabeth his wife, in right of the said Elizabeth, of one undivided moiety thereof, and the said John Luisley of the other undivided moiety thereof, to the common profit of them the said John Hunter and Elizabeth his wife, and the said John Luisley, and to render a reasonable account thereof to the said John Hunter and Elizabeth his wife, when he should be thereto afterwards requested; yet the said John Luisley, although often requested, hath not yet rendered any reasonable or other account thereof, or of any part thereof for the time aforesaid, or for any part thereof, to the said John Hunter and Elizabeth his wife, or to either of them, but hath hitherto wholly refused, and still doth refuse to render the same to them; wherefore the said John Hunter and Elizabeth his wife say that they are injured, and have sustained damage to the value of twenty pounds, and therefore they bring their suit. Pledges, &c.

No bail in this action till after judgment *quod computet*, 1. Lev. 300.

CITY OF BRISTOL, *vs.* J. M. complains against G. H. being, &c. in a plea, that he render to the said J. a reasonable account of the time in which he was bailiff of the said J. for this, to wit, that whereas the said G. from the twenty-seventh day of May, in the year of Our Lord 1740, until the first day of October in the year of Our Lord 1743, at the city of Bristol aforesaid, in the county of the same city, was the bailiff of the said J. and during that time had there the care and administration of divers goods and merchandizes of the said J. to wit, two hundred and twenty-two gross of corks and eight casks of the said J. of the value of twenty pounds of lawful money of Great Britain, to be merchandized and made profit of for the said G. to render account for the same to the said J. when he should be thereunto after required; yet the said G. although often required, hath not rendered a reasonable account for the same to the said J. but hath hitherto altogether refused, and still doth refuse so to do, to the damage of the said J. of twenty pounds, and therefore he brings his suit.

Declaration against a bailiff for an account of divers goods and merchandizes.

Plea, that the goods were destroyed by fire.

And the said G. by J. L. his attorney, comes and defends the wrong and injury when, &c. and says, that the said J. ought not to have his said action against him, because he says, that true it is that he the said G. had the care and administration of the said goods and merchandizes of the said J. to be merchandized and made profits of for the said J. to render a reasonable account for the same to the said J. as the said J. hath in and by his said declaration above supposed; nevertheless the said G. for plea, says, that after the delivery of the said goods and merchandizes to the said G. for the purpose aforesaid, and before the said G. could sell or merchandize the said goods and merchandizes, or any part thereof, or could make any profit thereof for the said J. to wit, on the tenth day of September 1740 aforesaid, the said goods and merchandizes were casually destroyed by fire without the neglect or default of the said G. to wit, at the city of B. aforesaid; and this &c. wherefore, &c.

Replication, that the goods were not destroyed by fire.

And the said J. says, that by reason of any thing in the said plea of the said G. above alledged, he ought not to be barred from having and maintaining his account aforesaid against him, because he says, that the said goods and merchandizes were not casually destroyed by fire without the neglect or default of the said G. as by his said plea he hath above alledged; and this he prays may be enquired of by the country, &c.

Declaration by administratrix against defendant as bailiff of her husband of the moiety of premises.

YORKSHIRE, ss. D. E. administratrix of all and singular the goods and chattels, rights and credits which were of T. E. her late husband deceased, at the time of his death, who died intestate, complains of O. G. being, &c. in a plea, that he render to the said D. his reasonable account from the time that he was bailiff of the said T. for this, to wit, that whereas the said O. on the twenty-ninth day of September, in the year of Our Lord 1747, at B. in the said county of York, was bailiff of the said T. of the moiety of one messuage called by the name of West Fryer House, and forty acres of land, forty acres of meadow, and forty acres of pasture, with the appurtenances in B. aforesaid, in the said county of York, which premises the said O. had, from the said twenty-ninth of September 1747, to the twenty-ninth of April 1748, and for all the same time had and received the issues and profits of the said moiety of the said messuage and tenement aforesaid, to render his reasonable account thereof to the said T. in his life-time, when he should be thereunto requested; nevertheless the said O. although often requested, that reasonable account to the said T. in his life-time, or to the said D. since the decease of the said T. to which said D. administration of all and singular the goods, chattels, rights and credits which were of the said T. at the time of his death, by W. W. doctor of laws, commissary and keeper general of the exchequer and prerogative court of the most reverend father in God M. by divine Providence, Lord Archbishop of York, primate of England and metropolitan, to whom the granting of that administration of right

right did belong, since the decease of the said T. that is to say, on the fourteenth of October 1749, at B. aforesaid, in due form of law was committed, hath not rendered, but he the said T. to render such reasonable account to the said T. in his life-time altogether denied, and the same to render to the said D. ever since the decease of the said T. hitherto hath altogether denied, and still doth deny; whereupon the said D. says she is injured, and hath damage to the value of twenty pounds, and thereof she brings suit, &c. And the said D. brings into court here the letters of administration aforesaid, granted to the said D. by which it appears to the court here, that the said D. is administratrix of all and singular the goods, chattels, rights and credits which were of the said T. her late husband deceased, at the time of his death, the date whereof is the same day and year for that purpose mentioned.

G. B. by D. E. widow, his mother, who is admitted by the court of our lord the king here to prosecute for the said G. who is under the age of twenty-one years, as next friend of the said G. complains against T. G. being, &c. in a plea, that he render to the said G. his reasonable account from the time that he was bailiff of the said G. for this, to wit, that whereas the said T. on the first day of May 1748, at B. in the county of York, was bailiff of the said G. of the moiety of one messuage called by the name of West Fryer House, and of forty acres of land, forty acres of meadow, and ten acres of pasture, with the appurtenances in B. aforesaid, in the said county of York, which premises the said T. had, from the first day of May until the seventh day of June 1780, and for all the same time had and received the issues and profits of the said moiety of the said messuage and tenement aforesaid, to render his reasonable account thereof to the said G. when he should be thereto requested; nevertheless the said T. although often requested, that reasonable account to the said G. hath not rendered, but the same to him to render hath hitherto altogether refused, and still doth refuse, to the damage of the said G. of the said two hundred pounds; and therefore he brings suit, &c.

Declaration by infant, by guardian, against defendant as bailiff of moiety of premises.

KENT, *ff.* James Jefferys v. Richard Hares, &c. in a plea, that he render to him a reasonable account for the time that he was bailiff of the said James; for that whereas he the said defendant for a long time, to wit, from the first day of June, *anno Domini* 1752, until, &c. at, &c. was proprietor of one undivided moiety and bailiff of the said plaintiff of the other undivided moiety of a certain mare, and during that time had the care and management of the said mare, and the letting out to hire of the said mare for the advantage and profit of the said defendant and plaintiff, to render a reasonable account thereof to the said plaintiff when he should be thereto afterwards requested; yet the said defendant, although often requested, hath not yet rendered the said reasonable account to the said plaintiff, but he so to do hath hitherto wholly refused, and still refuses, to the said plaintiff his damage of sixty pounds; and therefore he brings suit, &c. Pledges, &c.

Action of account by one joint tenant against another, for money received by letting a mare to hire. Statute 4 Anne, c. 16. §. 27. gives this action. Vide the same, and Com. Dig. vol. 1 96. B. & Co. Rep. 273.

GENERAL

GENERAL INDEBITATUS ASSUMPSIT.

ON AWARDS.

Declaration in
B. R. in general
indebitatus as-
sumpsit by exe-
cutors against an
administratrix
upon an award
entered into by
testator and in-
testate in their
respective life
times.

MIDDLESEX, to wit. J. R. clerk, and A. J. executors of the last will and testament of Mary H. deceased, complain against Isabella H. being, &c. for that whereas on the 11th day of June, A. D. 1784, at, &c. aforesaid, divers disputes, differences, and controversies had arisen, and were then and there depending between the said Mary H. in her lifetime, and one John Hughes; and thereupon, for the putting an end to the said disputes, differences, and controversies, the said Mary H. in her lifetime and the said John H. on the same day and year, at, &c. aforesaid, submitted themselves to stand to the award, order, arbitrament, final end and determination of F. W. of, &c. and R. G. of, &c. arbitrators indifferently named, elected, and chosen, as well on the part and behalf of the said John H. as of the said Mary H. to arbitrate, award, order, judge, and determine of and concerning the said disputes, differences, and controversies, so as the award should be made in writing ready to be delivered on or before the 24th day of September then next ensuing; and whereas afterwards, and within the time in that behalf limited for the said F. W. and R. G. to make their award concerning the premises as aforesaid, to wit, on the said twenty-fourth day of September, A. D. 1764, the said F. W. and R. G. in due manner made their award, order, and determination in writing of and concerning the premises so referred to them as aforesaid, then ready to be delivered to the said Mary H. and John H. and bearing date the day and year last aforesaid; whereby the said F. W. and R. G. did then and there amongst other things award and order that the said John H. his heirs, executors, or administrators, should, on or before the 25th of March next ensuing the date of the said award, well and truly pay, or cause to be paid unto the said Mary H. her executors, administrators, or assigns, the sum of nine hundred and eighty-three pounds and twopence halfpenny, with interest for the same after the rate of four pounds by the hundred by the year from the day of the date of the said award; and the said F. W. and R. G. did then and there by their said award farther award and order that the said John H. should within the

space

space of one month then next ensuing execute to the said Mary H. a general release of all actions, suits, damages, accounts, reckonings, and demands whatsoever, from the beginning of the world to the day of the date of the therein recited bonds of arbitration; and that the said Mary H. should within the same time in like manner execute to the said John H. a like general release of all actions, suits, damages, accounts, reckonings, and demands whatsoever, from the beginning of the world to the day of the date of the said recited bonds of arbitration; of all which said premises, he the said John H. afterwards, to wit, on the twenty seventh day of September in the year aforesaid, at, &c. aforesaid, had notice: and the said J. and A. in fact say, that the said John H. afterwards, and after the making of the said award, to wit, on the 1st day of October, A. D. 1765, at, &c. aforesaid, died intestate, possessed of and entitled unto divers goods, chattels, and effects of great value, to wit, of the value of three thousand pounds: and the said J. and A. further say, that administration of all and singular the goods, chattels, and credits, which were the goods, chattels, and credits of the said John H. at the time of his death, after the death of the said John Hughes, to wit, on, &c. at &c. aforesaid, by F. by divine Providence archbishop of Canterbury, primate of all England and metropolitan, was in due manner committed to the said Isabella, to wit, at, &c. aforesaid; and by virtue thereof she the said Isabella, to wit, on the day and year last aforesaid, at, &c. aforesaid, became and was possessed of divers goods and chattels, which were the goods and chattels of the said John H. at the time of his death: and the said J. and A. further say, that the said Mary H. afterwards, to wit, on, &c. at, &c. aforesaid, made her last will and testament in writing, and thereby constituted and appointed them the said J. and A. executors thereof; and afterwards, to wit, on the day and year last aforesaid, at, &c. aforesaid, died: and the said J. and A. further say, that the said sum of nine hundred and eighty-three pounds and twopence halfpenny, in the said award mentioned, at the time of the death of the said Mary H. was wholly due and owing and unpaid to the said Mary H.: by reason of which premises the said Isabella as administratrix as aforesaid, became liable to pay to the said J. and A. as executors as aforesaid, the said sum of nine hundred and eighty-three pounds and twopence halfpenny, in the said award mentioned, together with interest for the same from the day of the date of the said award after the rate of four pounds per cent per annum; and being so liable, she the said Isabella in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at, &c. aforesaid, undertook, and faithfully promised the said J. and A. to pay them the said sum of money in the said award mentioned, together with interest for the same as aforesaid, when she the said Isabella should be thereto afterwards requested. And whereas the said Isabella, as administratrix of the said John H. as aforesaid, afterwards, to wit, on the 1st day of June, A. D. 1772, at, &c. aforesaid, was

2d count more
general.
indebted

indebted to the said J. and A. as executors of the said Mary H. as aforesaid, in one thousand pounds of lawful, &c. upon and by virtue of a certain other award made by the said F. W. and R. G. upon and in pursuance of a certain other submission before that time made by the said John H. and Mary H. to the award, order, arbitrament, final end, and determination of the said F. W. and R. G. of and concerning all and all manner of action and actions, cause and causes of action, suits, bills, bonds, specialties, judgments, executions, extents, quarrels, controversies, trespasses, damages, and demands whatsoever, at any time or times before the said last mentioned submission had, made, moved, brought, commenced, prosecuted, done, and suffered, committed or depending, by or between them or either of them; and being so indebted, &c. [promise to pay]. 3d count, for money had and received by the defendant as administratrix, to the plaintiff's use; and common conclusion to all the counts, "that defendant had not paid the several sums of money to the plaintiffs as executors." (For conclusions to declarations in Assumpsit, see beginnings and endings to Declarations.) Damages two hundred pounds.

Declaration in B. R. in general *indebituratus assumpsit* on an award: Plaintiff, a surveyor, had taken surveys and made plans of defendant's estate, with a special count, as under.

SALOP, *ss.* Robert Hale complains of John Charlton Kinchant, esquire, being, &c. for that whereas, before the making of the promise and undertaking of the said defendant, hereafter next mentioned, to wit, on, &c. at, &c. divers disputes and differences had arisen and were then subsisting between the said Robert and the said John Charlton, and an action had been thereupon brought, and was depending in his majesty's court of King's Bench at Westminster, in the county of Middlesex, by and at the suit of the said Robert, against the said John Charlton, touching and concerning a certain demand of him the said Robert against the said John Charlton, to a large amount, to wit, to the amount of one hundred pounds of lawful money of Great Britain; on account of which said demand he the said Robert had before then delivered to the said John Charlton a certain bill consisting of several items, and (among other items in the said bill contained) there was a certain item of, &c. for the survey and plan of a certain estate, called Park Estate, before then made by him the said Robert for him the said John Charlton: and whereas, for the putting an end to the said disputes and differences, the said Robert and the said John Charlton, before the making of the promise and undertaking of the said John Charlton hereafter next mentioned, to wit, on the day and year aforesaid, at, &c. aforesaid, submitted themselves to the award, order, arbitrament, final end, and determination of one J. L. gentleman, an arbitrator indifferently named, elected, and chosen, as well on the part and behalf of the said Robert, as of the said John Charlton, to arbitrate, award, order, judge, and determine of and concerning the said disputes and differences: and whereas, afterwards, to wit, on, &c. at, &c. the said J. L. the arbitrator aforesaid, having taken upon himself

himself the burthen of the said arbitration, in due manner made his award and determination in writing, of and concerning the premises so referred to him as aforesaid, bearing date the day and year last aforesaid, and thereby then and there awarded and declared that he had examined several witnesses on the subject of the said Robert's demand on the said John Charlton, and thought the said Robert had sufficiently established the several items of his said bill, save the said item of, &c. for a survey and plan of Park Estate aforesaid; and as to that item the said Robert had agreed to deduct, &c. : and the said L. further awarded and declared, that he had taxed and settled the bill of costs (that is to say, the said Robert's bill of costs in the said action so depending as aforesaid) at sixteen pounds eleven shillings and twopence, so that the said Robert's then present demand would stand as underneath, (that is to say, as the same was and is stated underneath the said award), the balance amounting to thirty-one pounds nine shillings and three-pence, as by the said award more fully appears; of which said award the said John Charlton afterwards, to wit, on the day, &c. aforesaid, at, &c. aforesaid, had notice: by reason of which said several premises the said John C. became liable to pay to the said Robert the said sum of thirty-one pounds nine shillings and three pence. so awarded to him as aforesaid, when he the said John C. should be thereto afterwards requested; and being so liable he the said John C. undertook, &c. Another count upon another award in another action. And whereas, before the making of the promise and undertaking of the said John C. hereafter next mentioned, certain articles had been entered into between him the said John C. and B. Oliver, and the reverend Mr. Paleston, and divers other persons, for the fighting of a main of cocks at a certain place called Whitchurch, in the said county of Salop; and thereupon heretofore, to wit, on the 8th day of June, A. D. 1778, at S. aforesaid, in the county aforesaid, in consideration that the said Robert, at the special instance of the said J. C. would do every thing contained in the said articles on the behalf of him the said John C. and would indemnify him from all covenants and agreements therein on his part, he the said John C. then and there undertook and faithfully promised the said Robert to pay him the sum of five pounds at any time after the said covenants and agreements were performed, or the said articles delivered up to be cancelled, or were otherwise become void: and the said Robert avers that he, confiding in the said last mentioned promise and undertaking of the said John C. did every thing contained in the said articles on behalf of him the said John C. and indemnified him from all agreements and covenants therein on his part, to wit, at S. aforesaid, in the county aforesaid, whereof the said John C. afterwards, to wit, on the 1st July, in the year last aforesaid, there had notice; and by means of the said several premises last aforesaid, he the said J. C. according to the tenor and effect of his said last mentioned promise and undertaking, then and

A. Special count to pay money in consideration of indemnity. See that head under Special Assumpsit.

ASSUMPSIT GENERAL.—ON AWARDS.

and there became liable to pay the said sum of five pounds to the said Robert when he the said John C. should be thereto afterwards requested. (a) Count for work and labour as a surveyor, *quantum meruit*; another count for journies, *quantum meruit*; money laid out and expended, had and received, account stated; and common conclusion to the whole, &c.

(a) For these counts, see Morg. Richard- ginnings and endings of Declara-
son, Impey; and for conclusion, see be- tions.

Declaration on a submission to arbitration, and an award made awarding money to be paid by defendant to plaintiff against defendant, for not paying the same.

CUMBERLAND, to wit. George Atkinson, late, &c. gentleman, was attached to answer Thomas Whitefield of a plea of trespass on the case, &c. and thereupon the said Thomas, by A. B. his attorney, complains, that whereas on the 10th of November 1760, at Penrith in the said county, divers differences of accounts and disputes had arisen, and were then and there depending between the said plaintiff and the said defendant, and thereupon for putting an end to the said differences and disputes, they the said Thomas and George, on the same day and year aforesaid, at P. aforesaid, submitted themselves to stand to the award, arbitrament, and final determination of E. O. and J. S. provided they should give in their award in writing of and concerning the premises in the course of one calendar month then next ensuing; and if the said arbitrators would not end the disputes amicably between themselves, then to stand to the award and final decision of an umpire by the said arbitrators to be indifferently chosen, provided the said umpire should give in his said award and final determination in writing in the space of two calendar months then next following; and thereupon afterwards, to wit, on the same day and year aforesaid, at P. aforesaid, in consideration that the said plaintiff, at the special instance and request of the said G. had undertaken and faithfully promised (mutual promises). And the said plaintiff, in fact, says, that afterwards, and before the expiration of one calendar month from the time of making the said submission, to wit, on the said 8th of December, in the year aforesaid, at P. aforesaid, they the said E. and I. took upon themselves the burthen of the said award, and then and there in due manner made and gave in their award and final determination in writing of and concerning the premises so submitted to them as aforesaid, and by the said award did then and there award and order that all suits and controversies whatsoever had, moved, or depending between the said parties touching the difference of accounts to the day of the date of the said award, should cease and be no further prosecuted; and they did thereby further award that the said defendant should pay, or cause to be paid, the sum of seventy pounds to the said plaintiff, on or before the first of January then next following; and they did further award, that the said plaintiff should

pay

pay and bear all expences anywise relating to the said differences ; and lastly, they did thereby award that the said parties should give each to the other general releases from the beginning of the world to the day of making the said award; of all which premises the defendant on the 8th of December, in the year aforesaid, at, &c. had notice ; and although all suits and controversies whatsoever had, moved, or depending between the said parties touching the said difference of accounts to the said 8th of December, did then and there on the part and behalf of the said plaintiff, cease and were not further prosecuted, yet, &c. defendant did not pay the said bill on or before the said 1st of January, &c.

JAMES WALLACE.

BERKSHIRE, to wit. Edward Seymour esquire complains of Richard Povey being, &c. for that whereas, on the first day of February 1788, at, &c. divers disputes, differences, and controversies had before that time arisen, and were then depending between the said Edward and the said Richard, and thereupon, for putting an end to the said disputes, differences, and controversies, the said Edward and the said Richard, on the same day and year aforesaid, at, &c. submitted themselves, and then and there agreed to submit themselves, to stand to, abide, observe, perform, and fulfil the order, rule, and determination of Thomas Spanwich, of the parish of Lambourne in the said county of Berks, and Thomas Bacon of the parish of Ramsbury, in the county of Wilts, indifferently chosen by the said Edward and the said Richard, to settle all and all manner of debts, differences, quarrels, disputes, reckonings, agreements, and all other dues and demands whatsoever, both at law and in equity, or otherwise, howsoever then subsisting, or which might thereafter occur; and it was then and there further agreed, that the opinion, award, and determination of the said Thomas Spanwich and Thomas Bacon, touching the matters in question, should be final, and delivered in writing, and signed by them, by the twenty eighth day of February 1788; but if they the said T. S. and T. B. the referees, should not be able to settle the aforesaid disputes and differences, then and in that case the said Edward and the said Richard did thereby empower them the said T. S. and T. B. to choose and fix upon some other person whose determination should be likewise final; and the said agreement being so made as aforesaid, afterwards, to wit, on the same first day of February 1788, at, &c. in consideration that the said Edward, at the special instance and request of the said Richard, had then and there undertaken and faithfully promised to perform and fulfil the before mentioned agreement in all things on his part and behalf to be performed and fulfilled, he the said Richard undertook, and then and there faithfully promised the said Edward, that he the said Richard would perform and fulfil the said agreement in all things therein contained on his part and behalf to be performed and fulfilled; and the said Edward in fact says, that the said T. S. and T. B. being such arbitrators as aforesaid, could not agree

Declaration in Special Assumpsit for not performing an award made by an umpire upon a parole submission of all matters in difference to two arbitrators, with a power to nominate such umpire, if they could not agree. 2d count, upon a very special demise by agreement, on plain paper, between plaintiff and defendant, of lands and houses, &c. for not paying rent, and not repairing, &c. 3d and 4th counts, use and occupation. 5th. Indebitatus Assumpsit for money awarded by umpire under the circumstances of the above reference.

agree in opinion so as to settle the said matters in dispute at the time of the making the said agreement between the said Edward and the said Richard, and were not able to settle the aforesaid disputes and differences between them; and thereupon afterwards, and before the said twenty-eighth day of February 1788, to wit, on the twenty-seventh day of February 1788, at, &c. the said T. S. and T. B. being such arbitrators as aforesaid, by virtue of the said power so given to them as aforesaid, and by and with the approbation and consent of the said Edward and the said Richard, and by their direction, did nominate, appoint, choose, and fix on one Samuel Ballard, to be an umpire or a third person to arbitrate, award, order, and finally determine of, in and concerning all matters in difference between the said Edward and the said Richard, as well on the part and behalf of the said Edward as the said Richard, so that he the said Samuel Ballard should make and set down his award and umpirage in writing, ready to be delivered to the said Edward and Richard on or before the eleventh day of March next. And the said Edward further says, that the said Samuel Ballard being indifferently chosen such umpire as aforesaid, and having taken upon himself the charge and burthen of the said award or umpirage, did afterwards, and within the time in that behalf limited for the making of the said award or umpirage as aforesaid, to wit, on the eleventh day of March 1788, at, &c. in due manner made and set down his award or umpirage in writing, of and concerning the matters in difference at the time of the making of the said first mentioned agreement so referred to him as aforesaid, then ready to be delivered to the said Edward and the said Richard, bearing date the same day and year last aforesaid; and thereby he the said Samuel Ballard did, amongst other things, award, order, decree, and determine of and concerning the aforesaid matters in difference at the time of making the said agreement, that the said Richard, his executors or administrators, should and did, on or before the twentieth day of March then instant, pay or cause to be paid to the said Edward, his executors or administrators, at or in the then dwelling-house of him the said Edward, situate in Lambourne Woodlands, in the said county, the full sum of one hundred and eighty pounds seven shillings and nine-pence of lawful, &c. in full payment, discharge, and satisfaction of and for all rent, and all monies, debts, and demands whatsoever, due or owing unto the said Edward by the said Richard, on any account whatsoever, at any time before and on the tenth day of October 1787; and the said Samuel Ballard did thereby, by his said award or umpirage, further award, order, decree, and determine, that all actions, suits, quarrels, controversies, and disputes whatsoever had, moved, brought, commenced, or depending between the said parties in difference, which in any manner related to or concerned the premises to him the said Samuel Ballard submitted as aforesaid, should from thenceforth cease, determine, and be finally ended, and no further prosecuted or proceeded in by them or any of them, or by their or either of their means, consent, or procurement; and the said Samuel

Isaue Ballard did then and there, by his said award or umpirage, further award, order, decree, and determine, that the said Edward and Richard should, within the space of one month next after the payment of the aforesaid sum of one hundred and eighty pounds seven shillings and nine pence, at their joint and equal expence, feal and execute unto each other general releases of all actions, cause or causes of action, suits, disputes, controversies, trespasses, debts, duties, damages, accounts, reckonings, and demands whatsoever, for or by reason of any matter, cause, or thing whatsoever, from the beginning of the world until the aforesaid tenth day of October 1787 inclusive; of all which premises the said Richard afterwards, to wit, on the said eleventh day of March 1788, at, &c. had notice; by reason of which premises the said Richard became liable to pay to the said Edward the said sum of one hundred and eighty pounds seven shillings and nine pence, according to the form and effect of the said award, and which he the said Richard, in consequence thereof, ought to have paid to the said Edward, according to the form and effect of the said agreement, and the said promise and undertaking of the said Richard so made as aforesaid: Yet the said Richard, not regarding the said agreement, nor his said promise and undertaking so by him in this behalf made, but contriving, &c. hath not yet paid to the said Edward, at his aforesaid house, or in any other manner, the said sum of money, or any part thereof, in the said award mentioned, although the said twentieth day of March 1788 is long since past, and although he the said Richard, upon the twentieth day of March 1788, and afterwards, to wit, on the first day of June 1788, at, &c. was thereunto requested by the said Edward; but to pay the same, or any part thereof, to the said Edward, he the said Richard hath hitherto wholly refused, and still doth refuse, contrary to the form and effect of the said agreement, and the said promise and undertaking of the said Richard so made as aforesaid. *And whereas* also the said Edward, before and at the time of the making of the said agreement hereinafter mentioned, and continually from thenceforth hitherto hath been, and still is, seised in his demesne as of fee, of and in the barns, lands, and tenements in the said agreement hereinafter mentioned, with the appurtenances; and being so seised thereof, to wit, on the fifth day of June 1788, at, &c. it was agreed by and between the said Edward and the said Richard in manner and form following, that is to say, that the said Edward should let, and the said Richard should take and rent all that farm called Liquid, and also that farm called Ragnell, (woods, borders, and trees excepted,) for the term of eleven years from Michaelmas then next, the rent to be at and after the rate of sixteen shillings per acre, rishe included; and that the said Richard, as tenant, should pay all taxes, (land taxes excepted,) and that he should keep the said premises in good repair, the said Edward, as landlord, finding materials, and the said Richard, as tenant, workmanship; and that no hedge should be cut under ten or above

ad Count. Special assumpsit, landlord against tenant, under a very special demise, on plain paper, for not paying rent, and not repairing.

ASSUMPSIT GENERAL.—ON AWARDS.

twelve years old, to be done in an husbandlike manner, and that the hedges should be preserved from cattle and other damages, and that the said Richard should leave the same grounds or fields in grass as were then, and part to be winter ploughed in the fourteen acres as were at the time of making the said agreement, and that the crops should be valued by two persons on the second of June in the last year of the said eleven years, and that the landlord or succesor should take the grass at the appraised value, and the money to be paid on demand: and it was then and there agreed, that the said grounds should be manured the preceding Christmas, and the old clover to be entered immediately after appraisement: and it was then and there further agreed, that the landlord or succesor should sow the grass seeds the last year of the said term of eleven years, on what grounds, and with what seeds, he should think proper, and pay for the seed; and that the grounds next to the meadow at Ragnell should be left the last year of the said term, and the commons, for the landlord or his succesor, at May Day, and the said Ragnell meadow and clover grounds by Poutins to be left at Midsummer; and that the said Richard, as tenant, should keep the premises in good repair, and that the landlord should find materials, and the said Richard workmanship; and that the landlord or succesor should enter upon the commons and the Ragnell ground next to the meadow on May Day, and that the straw, dung, and compost should be spent on the premises, and should be left the two last years in the farm yard; and that the said rent of the said premises should be paid half-yearly, viz. at Lady Day and Michaelmas, and in default of which the landlord should re-enter the premises, as if no contract as aforesaid had been made; and that the landlord should have free ingress, egress, and regress with his people, horses, waggons, and carts, at all seasonable times, and that the landlord or succesor should have part of the house, viz. the parlour and the rooms over, and the stable, at May Day before the expiration of the term aforesaid; and that the said Richard should quit the whole premises on the Midsummer after the expiration of the aforesaid term: and it was then and there further agreed, that when the barns or stables and cart-house, part of the said premises, should want new thatching entirely, that the landlord should find workmanship and all materials, excepting wheat straw, which the said Richard, as tenant should find. And the said last mentioned agreement being so made as aforesaid, afterwards, to wit, &c. (state mutual promises); and the said Edward in fact says, that the said Richard afterwards, and after the making the said agreement, in pursuance thereof, to wit, on the eleventh day of October in the year last aforesaid, entered upon the said premises in the said last mentioned agreement mentioned, and then and there became and was possessed thereof, and hath continued to hold and enjoy the last aforesaid premises from the said eleventh day of October 1784, hitherto, to wit, at Reading aforesaid, in the county aforesaid. And although the said Edward always, and

and from the time of making his said promise and undertaking so by him made as aforesaid, hitherto hath well and duly performed and fulfilled the said beforementioned agreement in all things therein contained on his part and behalf to be observed, performed, and fulfilled; the said Edward in fact further says, that a large sum of money, to wit, three hundred pounds, of, &c. of the rent aforesaid, at and after the rate last aforesaid accrued, and became due from the said Richard to the said Edward, for and in respect of the said premises so held and occupied by him as last aforesaid, at and upon Michaelmas Day now last past, which the said Richard ought to have paid to the said Edward, according to the form and effect of the said agreement, and his said promise and undertaking so by him made as last aforesaid, to wit, at, &c. whereof the said Richard afterwards, to wit, on the first day of November 1788, there had notice: Yet the said defendant, not regarding, &c. but contriving, &c. hath not paid or caused to be paid to the said Edward the rent aforesaid, so accrued due as aforesaid, or any part thereof, although often requested so to do; but to pay the same, or any part thereof, to the said Edward, he the said Richard hath hitherto wholly refused, and still doth refuse, contrary, &c. And the said Edward further says, that the said Richard, further disregarding his said agreement and his promise and undertaking in that behalf made as last aforesaid, and further contriving, &c. hath not at any time since he became possessed of the aforesaid premises, maintained and kept, and caused to be maintained and kept the hedges and fences of and belonging to the aforesaid premises in repair, nor preserved the same from cattle and other damages; but on the contrary thereof hath wholly omitted so to do, and hath suffered and permitted the said hedges and fences, and all and every of them, to become ruinous, prostrate, and in great decay for want of sufficient and necessary repairs thereof, by means whereof divers cattle, to wit, horses, &c. entered and came in and upon the said hedges and fences of and belonging to the said premises, and eat up, damaged, killed, and destroyed, and consumed the said hedges and fences, contrary, &c. to wit, at, &c. (Add counts for use and occupation, and *quantum meruit*). And where- as also the said Richard afterwards, to wit, on, &c. at, &c. was indebted to the said Edward in another large sum of money, to wit, in the further sum of five hundred pounds, of, &c. upon and by virtue of a certain other award or umpirage made by the said Samuel Ballard upon, &c. by virtue of a certain other submission before that time made and entered into by the said Edward and the said Richard to the award, order, and determination of the said T. Spanswich and T. Bacon, of and concerning all matters in difference then depending between the said Edward and the said Richard, being other matters in difference, and thereby empowering the said Thomas Spanswich and Thomas Bacon, in case they should not agree in making such last mentioned award, to appoint a third person to award, determine, and finally settle the said matters; and whereupon the said T. S. and T. B. not agreeing in

(*) *General in-
debitum as-
sumpti* for mo-
ney awarded by
an umpire after
a parol submis-
sion to arbitra-
tors, with power
to nominate such
umpire in case
of their not
agreeing, &c.

ASSUMPSIT GENERAL.—ON WAGERS.

making the said award, and by virtue of the aforesaid power, and by and with the consent and approbation of the said Edward and the said Richard, nominated and appointed the said Samuel Ballard as an umpire to arbitrate, award, order, and finally determine of and concerning all matters in difference between the said Edward and the said Richard. And being so indebted, assumpsit accordingly. (Money lent; money had and received; account stated.)

FOSTER BOWER.

(a) It is very doubtful whether this count could be supported if demurred to, but said it was usual to add it. Bower struck out the count, because it could be of no use; for being an assumpsit, and the award under seal, the award would not support the declaration in evidence, it no longer being an assumpsit. See Dodd and Herbert, St. 459.

I think the plaintiff, upon proving the several matters contained in the declaration, may recover either on the 1st count on the agreement to submit to arbitration, or on the second upon the original agreement for the lease of the premises;

or he may recover so much of his demand as relates to rent on the count for use and occupation. I apprehend no objection can be taken for want of the date upon the submission, so that the submission is proved to have been actually entered into. The reference to the umpire must be stamped; but I do not think the original agreement between Mr. Seymour and his tenant needs stamping*. The award is not objectionable for being made upon a higher stamp than the law requires; nor do I see any objection which affects the present question. I approve likewise of the form of the declaration.

* On looking into the stamp act of 23. Geo. 3. I find it takes place from the first of August 1783, instead of 1784, (as upon memory only I had conceived,) and the original agreement must therefore be stamped as well as the reference.

FOSTER BOWER.

ON WAGERS.

On a wager, whether A. had become bail for B. in a cause then pending in the marshal's court.

1780. The Court of the King's Palace at Westminster.

April 7th. } ROBERT BROOME, by Richard Kelfall his attorney, complains against Robert Barker, of a plea of trespass on the case, for that whereas on the first day of July, in the year of Our Lord 1779, at Southwark in the county of Surrey, and within the jurisdiction of this court, a certain discourse was moved and had by and between the said Robert Broome and the said Robert Barker, of and concerning a certain cause or suit then depending in the said court of our lord the now king of his palace of Westminster aforesaid, between the said Robert Broome, plaintiff, and one Humphrey Moore, defendant, in a certain plea of trespass on the case to the damage of the said Robert Broome of ninety-nine shillings, and upon that discourse a question then and there arose and was debated between the said Robert Broome and the said Robert Barker, whether the said Robert Barker had ever become bail for the said Humphrey Moore in the said plea or suit or not; and the said Robert

Robert Broome then and there asserted and affirmed that the said Robert Barker had become bail for the said Humphrey in the said plea or suit, and which said assertion and affirmation of the said Robert Broome he the said Robert Barker then and there wholly denied and asserted to the contrary thereof; and thereupon afterwards, to wit, on the same day and year aforesaid, at Southwark aforesaid, in the county and jurisdiction aforesaid, in consideration that the said Robert Broome, at the special instance and request of the said Robert Barker, had then and there paid to the said Robert Barker the sum of five pounds of lawful money of Great Britain, he the said Robert Barker undertook, and to the said Robert Broome then and there faithfully promised to pay to him the said Robert Broome the sum of ten pounds of like lawful money, in case he the said Robert Barker had ever become bail for the said Humphrey Moore in the said plea or suit. And the said Robert Broome in fact says, that the said Robert Barker before the making of the promise and undertaking aforesaid, to wit, on the fourth day of October, in the year of Our Lord 1778, had become bail in the said Palace Court for the said Humphrey Moore, to wit, in the said Palace Court then held at Southwark aforesaid, in the county and jurisdiction aforesaid, whereof the said Robert Barker, afterwards, to wit, on the same first day of July, A. D. 1779, at Southwark aforesaid, in the county and jurisdiction aforesaid, had notice; by reason whereof the said Robert Barker became liable to pay, and ought to pay to the said Robert Broome the said sum of ten pounds, whereof the said Robert Barker then and there had notice; yet the said Robert Barker, not regarding his promise and undertaking aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said Robert Broome in this behalf, although often requested, hath not yet paid to the said Robert Broome the said sum of ten pounds, or any part thereof, but he so to do hath hitherto wholly refused, and still doth refuse, to the damage of the said Robert Broome of twenty pounds; and therefore he brings his suit, &c. And also the said Robert Broome avers, that neither he nor the said Robert Barker, nor either of them at the time of levying of the plaint of the said Robert Broome here in court, were nor now are of the king's household.

And the said Robert Barker, by Richard Heighway, his attorney, comes and defends the wrong and injury when, &c. and says, that true it is that such discourse was moved and had by and between the said Robert Broome and the said Robert Barker, as the said Robert Broome hath above alledged, and that the said Robert Barker did promise and undertake in manner and form as the said Robert Broome hath above in and by his said declaration alledged against him; but the said Robert Barker further saith, that he the said Robert Broome ought not to have or maintain his aforesaid action thereof against him, because he saith, that he the said Robert Barker had not at any time before the making of the said promise and undertaking of the said Robert Barker, become bail for

Averment.

Plea thereto.

Facts.

the said Humphrey Moore in the said plea or suit, as by the declaration is above alledged; and of this he puts himself upon the country; and the said Robert Broome doth the like: It is therefore commanded by the said Court to the bearers of the virges of the king's household, the officers and ministers of the said court, and to every of them, that they or one of them do cause to come before the judges of the said court at the court of the king's palace of Westminster aforesaid, on Friday the fourteenth day of April next following, to be held here, to wit, at Southwark aforesaid, in the said county of Surrey, within the jurisdiction aforesaid, twelve free and lawful men of the neighbourhood of Southwark aforesaid, in the said county of Surrey, within the jurisdiction of the court aforesaid, by whom the truth of the matter may be the better known, and who are in no wise akin either to the said Robert Broome or to the said Robert Barker, to make a certain jury between the said Robert Broome and the said Robert Barker, concerning the plea aforesaid, because as well the said Robert Barker as the said Robert Broome, between whom the contention thereupon is, have put themselves upon the said jury, the same day is given by the court here to the parties aforesaid here, &c. At which day, to wit, at the court of the king's palace of Westminster, lastly above mentioned, holden before the Judges of the said court here, to wit, at Southwark aforesaid, in the said county of Surrey, within the jurisdiction of the said court, on the said Friday, the fourteenth day of April, in the twentieth year of the reign of our lord the now king, comes as well the said Robert Broome as the said Robert Barker, by their aforesaid attornies; and the jurors of the jury beforementioned, to wit, William Richardson, &c. being called likewise come; who being chosen, tried, and sworn to speak the truth concerning the premises, say, upon their oath, that the said Robert Barker had not, at any time before the making of the aforesaid promise and undertaking of the said Robert Barker, become bail for the said Humphrey Moore in the said plea or suit mentioned in the aforesaid declaration of the said Robert Broome, as by the said declaration is above alledged.

V. LAWES,

Verdict.

Declaration by the *juror* of two against the *administrator* of the other in *assumpsit*, upon a *wager* of 1000*l.* who should live the longer; and *Opinions* thereon.

YORKSHIRE, to wit. Sir John Ramsden, bart. complains of Thomas Townley Parker, esquire, administrator of all and singular the goods and chattels, rights and credits, which were of Banastre Parker, esquire, deceased, at the time of his death, who died intestate, being in the custody of the marshal of the marshalsea of our sovereign lord the present king, before the king himself; for that whereas on the twenty-first day of August, A. D. 1782, at Tadcaster, in the said county of York, in consideration that the said Sir John, at the special instance and request of the said Banastre, had then and there undertaken, and faithfully promised the said Banastre, to pay to the said B. the sum of 1000*l.* of lawful money of Great Britain, if he the said B. should outlive the said Sir John, he the said B. undertook, and to the said Sir John then and there faithfully promised, to pay to him the sum of one thousand pounds of like lawful money, if he the said Sir John should outlive the

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the said B. ; and the said Sir John in fact says, that the said B afterwards, to wit, on the first day of January, A. D. 1789, at T. aforesaid, died, and the said Sir John then and there survived the said B. : nevertheless, the said Thomas Townley, administrator as aforesaid, not regarding the said promise and undertaking of the said B. so made as aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said Sir John in this behalf, hath not (although often requested) paid to the said Sir John the said sum of one thousand pounds, or any part thereof, neither was the same paid to the said Sir John by the said B. in his life-time, but to pay the same to the said Sir John the said Thomas Townley hath hitherto altogether refused, and still doth refuse, and the same still remains wholly unpaid to the said Sir John. And whereas also, on the said twenty-first day of August, in the said year of Our Lord 1782 aforesaid, at T. aforesaid, in consideration that the said Sir John, at the like instance and request of the said B. had then and there undertaken, and faithfully promised the said B. that the executors or administrators of the said Sir John would pay to the said B. the sum of one thousand pounds of like lawful money, if the said B. should outlive the said Sir John, he the said B. undertook, and to the said Sir John then and there faithfully promised, that the executors or administrators of the said B. should pay to the said Sir John the sum of one thousand pounds of like lawful money, if he the said Sir John should outlive the said B. ; and the said Sir John in fact says, that the said B. afterwards, to wit, on the first day of January, A. D. 1789, at T. aforesaid, died, and the said Sir John then and there survived him the said B. : nevertheless the said T. T. executor as aforesaid, not regarding the said promise and undertaking of the said B. so made by him as last aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said Sir John in this behalf, hath not (although often requested) paid to the said Sir John the said sum of one thousand pounds, or any part thereof, but to pay the same to the said Sir John the said T. T. hath hitherto altogether refused, and the same still remains wholly unpaid to the said Sir John, to the damage of the said Sir John of 2000l. ; and therefore he brings suit, &c.

2d count, On a promise that the executors, &c. of the person dying first should pay to the survivor,

A. CHAMBER.

Mr. Banastre Parker having died intestate, his personal estate alone is liable to payment of his simple contract debts, and his *simple* contract creditors cannot have the benefit of his personal estate, except by a suit in equity for marshalling his assets, as the administrator may plead the debts by bond and covenant, and that he has not assets beyond those debts, to any action by a simple contract creditor, and consequently may defeat the demand of Sir John Ramdén at law, supposing him to have a legal demand. Whether he has a legal demand or not I think must depend upon the construction to be given to the statute of 14. Geo. 3. c. 18. ; for

independent of that statute, I think it impossible (considering the decisions on wagers) to hold this an unlawful wager. In Foster and Thackeray, cited 1. Term Rep. 57. note 6. a wager on an event in which the parties had no interest was considered as within the statute by the Judges of the Courts of King's Bench and Common Pleas, though the Barons of the Exchequer differed in opinion. In Atherfold and Beard, 2. Term Rep. 610. Buller J. thought with the Judges of the King's Bench and Common Pleas in Foster and Thackeray : he admitted, that the statute spoke only of policies, but thought it might extend to the case of a wager.

wager. I do not know that the point has ever been decided. I think, considering the words of the 14. Geo. 3. it will be difficult to bring this case within it: the words are, "that no insurance shall be made," and the common construction of the word Insurance is an agreement, in consideration of a sum paid, to pay a larger sum on a future event, which I think it will be difficult to apply to a mere wager. The contract between Sir John R. and Mr. Parker was merely, that the representatives of whichever should die first should pay the survivor a certain sum. There appears to me to be nothing illegal in such contract, independent of the statute. Indeed, the policy of the act appears to me in no degree to apply to the case of a simple wager. I therefore apprehend Sir John R. must have a verdict and judgment for his demand against the goods of the late Mr. P. though he can have no fruit of his judgment at law. *If Mr. P. is desirous that this demand should not prejudice other simple creditors, he should give them notice of it, and any of the creditors may file a bill on behalf of himself and the other creditors*

against Mr. P. for an account and administration of the personal estate, and to have the assets marshalled, and that the simple contract may stand in the place of the specialty creditors on the real estate, to the extent of the personal estate exhausted in payment of specialty debts.

Mr. P. may put in an amicable answer, and the case may be heard by consent before Sir J. R. can have judgment, and then Mr. P. may, by a bill against him, restrain his future proceedings, and compel him to come in with the other simple contract creditors under the decree.

If Sir John Ramsden can obtain a judgment before a decree for administration of the assets is obtained, he must be preferred in the administration before the other simple contract creditors.

JOHN MITFORD.

N. B. Mr. Chambre's and Mr. Heywood's Opinions on the part of the plaintiff, and Mr. Lawes' and Mr. Topping's Opinions on the part of the defendant, were taken on this case, and they all agreed, that the wager was recoverable at law.

Pleas thereto :
1st, *Non assumpsit*
by testator.
2d, *Plene administravit* by administrator.
3d, *Plene administravit præter*
several bond debts to defendant's self and others, and also several debts due to defendant on simple contract, and 5l. assets, which is insufficient to satisfy them.

And the said Thomas Townley, administrator as aforesaid, by James Hodgson his attorney, comes and defends the wrong and injury when, &c. and says that the said Banastre Parker, deceased, in his lifetime, did not undertake and promise in manner and form as the said Sir John hath above thereof complained against him the said Thomas Townley, and of this he puts himself upon the country, &c. And for further plea in this behalf the said T. T. by leave of the Court here to him for this purpose first granted according to the form of the statute in such case made and provided, says that the said Sir John ought not to have or maintain his aforesaid action thereof against him, because he says that he the said T. T. has fully administered all and singular the goods and chattels which were of the said Banastre Parker now deceased, at the time of his death, which have ever come to or been in his hands to be administered, to wit, at Tadcaster aforesaid, in the county aforesaid; and that he the said T. T. hath not, nor at the time of exhibiting the bill of the said Sir John, or at any time since, had any goods or chattels which were the goods or chattels of the said Banastre Parker deceased, at the time of his death, in the hands of him the said T. T. to be administered, and this the said Thomas T. is ready to verify; wherefore he prays judgment if the said Sir John ought to have or maintain his aforesaid action thereof against him, &c. And for further plea in this behalf the said T. T. by like leave of the Court here to him for this purpose first granted according to the form of the statute in such case made and provided, says that the said Sir John ought not to have or maintain his aforesaid action thereof against him the said T. T. because

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because he says that the said Banastre Parker deceased, in his lifetime, to wit, on the twenty-ninth day of September, in the year of Our Lord 1785, to wit, at Tadcaster aforesaid, in the county aforesaid, by his certain writing obligatory, bearing date the day and year aforesaid, sealed with his seal, and as his deed delivered for a just and true debt, became held and firmly bound to one John Nabb and J. S. Aspden in the sum of one thousand six hundred pounds of lawful money of Great Britain, to be paid to the said John Nabb and Joseph Seton Aspden, when he the said Banastre Parker deceased should be thereunto afterwards requested, which said writing obligatory at the time of the death of the said B. Parker deceased was and still remains there in full force unpaid and uncanceled; and also that the said B. Parker deceased, in his lifetime, to wit, on the tenth day of April, in the year of Our Lord 1782, to wit, at Tadcaster aforesaid, in the county aforesaid, by his certain other writing obligatory, bearing date the day and year last aforesaid, sealed with his seal, and as his deed delivered as another just and true debt, became held and firmly bound to one Ann Alker and one Jennet Alker in the sum of eight hundred pounds of lawful money of Great Britain, to be paid to the said Ann Alker and Jennet Alker when he the said Banastre Parker deceased should be thereto afterwards requested, which said last mentioned writing obligatory at the time of the death of the said B. Parker deceased was and still remains there in full force unpaid and uncanceled; and also that the said B. Parker deceased, in his lifetime, to wit, on the sixth day of August, in the year of Our Lord 1785, to wit, at Tadcaster aforesaid, in the county aforesaid, by his certain other writing obligatory, bearing date the day and year last aforesaid, sealed with his seal, and as his deed delivered for another just and true debt, became held and firmly bound to one Mrs. Lea in the sum of four hundred pounds of like lawful money, to be paid to the said Mrs. Lea when he the said B. Parker deceased should be thereto afterwards requested, which said last mentioned writing obligatory at the time of the death of the said B. Parker deceased was and still remains there in full force unpaid and uncanceled; and also that the said B. Parker deceased, in his lifetime, to wit, on the tenth day of April, in the year of Our Lord 1782, to wit, at Tadcaster aforesaid, in the county aforesaid, by his certain other writing obligatory, bearing date the day and year last aforesaid, sealed with his seal, and as his deed delivered for another just and true debt, became held and firmly bound to one Francis Plumbe in the sum of seven hundred pounds, to be paid to the said Francis Plumbe, when he the said B. Parker deceased should be thereto afterwards requested, which said last mentioned writing obligatory at the time of the death of the said B. Parker deceased was and still remains there in full force unpaid and uncanceled; and also that the said B. Parker deceased, in his lifetime, to wit, on the twenty-fourth day of October, in the year of Our Lord 1786, to wit, at Tadcaster aforesaid, in the county aforesaid, by his certain other writing obligatory, bearing date the day and year last

last aforesaid, sealed with his seal, and as his deed delivered for another just and true debt, became held and firmly bound to one Margaret Townley in the sum of six hundred pounds of like lawful money, to be paid to the said Margaret Townley when he the said B. Parker deceased should be thereto afterwards requested, which said last mentioned writing obligatory at the time of the death of the said B. Parker deceased was and still remains there in full force unpaid and uncanceled; and the said Thomas Townley further says, that the said B. Parker deceased, in his life-time, to wit, on the eighteenth day of January, in the year of Our Lord 1788, to wit, at Tadcaster aforesaid, by his certain other writing obligatory, bearing date the day and year last aforesaid, sealed with his seal, and as his deed delivered for another just and true debt, became held and firmly bound to the said Margaret Townley in the sum of five hundred pounds of like lawful money, to be paid to the said Margaret Townley when he the said B. Parker deceased should be thereto afterwards requested, and which said last mentioned writing obligatory at the time of the death of the said B. Parker deceased was and still remains there in full force unpaid and uncanceled; and the said T. T. further says, that the said Banastre Parker deceased, in his life-time, and at the time of his death, to wit, at Tadcaster aforesaid, in the county aforesaid, was justly and truly indebted to the said T. T. in the further sum of two hundred pounds, of like lawful money, for money by the said T. T. before that time lent and advanced to, and paid, laid out and expended for the said B. Parker deceased, and at his special instance and request, and for money by the said B. Parker deceased before that time had and received to and for the use of the said T. T. and for money due from the said B. Parker deceased to the said T. T. upon divers accounts before that time had and stated by and between the said B. Parker deceased and the said T. T. And the said T. T. further saith, that the said B. Parker deceased, afterwards, to wit, on the seventh day of February, in the year of Our Lord 1788, to wit, at Tadcaster aforesaid, in the county aforesaid, died so indebted to him the said T. T. intestate, after whose death, to wit, on the twenty-third day of December, in the said year of Our Lord 1788, administration of all and singular the goods, chattels, and credits, which were of the said Banastre Parker deceased, at the time of his death, by John Briggs, clerk, master of arts, vicar general and official principal of the right reverend father in God, William, by divine permission Lord Bishop of Chester, to whom the granting of that administration of right belonged, was in due manner committed to the said T. T. to wit, at Tadcaster aforesaid, (and which said letters of administration the said Thomas T. now brings here into court, bearing date the day and year last above mentioned), by means whereof the said T. T. became, and was, and still is, administrator of all and singular the goods and chattels, rights and credits, which were of the said Banastre Parker at the time of his death, to wit, at Tadcaster aforesaid: and the said Thomas T. further says, that he has fully administered all and singular

*Profer of the
letters of ad-
ministration.*

ASSUMPSIT GENERAL.—ON WAGERS.

singular the goods and chattels which were of the said B. Parker deceased, at the time of his death, in his hands to be administered, except goods and chattels to the value of five pounds, to wit, at Tadcaster aforesaid, in the county aforesaid; and that he the said T. T. had not at the time of the commencement of this suit, or at any time since, nor now hath, any goods or chattels which were of the said B. Parker deceased, at the time of his death, in the hands of him the said T. T. to be administered, except goods and chattels to the value of five pounds, which are not sufficient to pay or satisfy the money due and owing upon and by virtue of the said writings obligatory herein-before-mentioned, and the aforesaid debt so due to him the said T. T. as aforesaid, and which are subject and liable to the satisfaction and payment thereof; and this he the said T. T. is ready to verify; wherefore he prays judgment if the said Sir John ought to have or maintain his aforesaid action against him, &c.

JAMES TOPPING,

I Think this bond should be stated as (upon the face of it it purports to be) a bond to the persons named in it, as obligees, and that the assents of it to the defendant need not be shewn; because being a chose in action, it could not be assigned at law, the assents only vesting in the assignee a power to sue in the name of the obligee, if necessary to bring an action at law for the recovery of it. T. B.

I Have not a copy of the bonds hereafter mentioned, must therefore trouble Mr. Hodgson to supply the blanks throughout. T. B.

N. B. The blanks for the sums must be supplied, with the penalties of the bonds. Observe this throughout. T. B.

I Have gone through all the long papers laid before me, as instructions for plea in this cause, with great attention, and have drawn the above, which I think quite sufficient to defeat the present action. I have pleaded only such bonds as are specified in the case, (though others

are referred to generally) because I think their amount more than sufficient for the purpose of this plea. Care should be taken to insert the dates and sums in the bonds truly, and the latter should be in the penalties, and not the sums mentioned in the conditions. It is sometimes usual in cases like this to set out the bonds and conditions and state how much is really due upon both: but as I conceive that is only absolutely necessary when the day of payment is yet to come, and it is long past in all the above, and it tends both to brevity and safety to state the bonds only without the conditions, I have done so here.

T. BARROW,

I Have perused and approve of these pleas, as properly drawn in point of form, when the blanks are filled up. I take it for granted the bonds are or will be truly described, and that the assents are much more than covered by these bonds and the administrator's own debt, for I have nothing before me but the draft of the pleas themselves.

EDWARD LAW,

YORKSHIRE, to wit. Thomas Richardson complains of A. Hudson, being, &c. in a plea of trespass on the case, &c.; for that whereas heretofore, to wit, on the first day of January, A. D. 1787, at Leeds, in the county of Y. in consideration that the said T. R. at the special instance and request of the said A. H. had then and there agreed and undertaken, and faithfully promised the said A. H. to play at a certain game (that is to say, a certain game called pitch halfpenny) with him the said A. H. and to pay him all such sum or sums of money as he the said T. R. should lose to the said A. H. by means of his so playing with him the said A. H. when

General indebtedness assumed by winner against loser at a game called pitch halfpenny for 91. 19s. 6d. the original sum lost being 161. and upwards.

when he the said T. R. should be thereunto afterwards requested, he the said A. H. then and there, to wit, on the day and year aforesaid, at L. aforesaid, in the county aforesaid, agreed and undertook, and faithfully promised the said T. R. to play at the said game with him the said T. R. and to pay him the said T. R. all such sum and sums of money as he the said A. H. should lose to the said T. R. by means of his so playing with him the said T. R. when he the said A. H. should be thereunto afterwards requested; and the said T. R. avers that he, confiding in the said promise and undertaking of the said A. H. so by him made as aforesaid, did afterwards, to wit, on the day and year aforesaid, at Leeds aforesaid, in the county aforesaid, play at the said game with him the said A. H. who did also then and there play at the said game with him the said T. R.; and although the said A. H. by means of his so playing at the said game with the said T. R. as aforesaid, did then and there lose to him the said T. R. who did then and there win of him the said A. H. divers sums of money, in the whole amounting to a large sum of money, to wit, the sum of nine pounds nineteen shillings and sixpence, of lawful money of Great Britain (whereof part was then and there paid to the said T. R.); and although the said A. H. was then and there requested by the said T. R. to pay him the said sum of money so by him lost to the said T. R. in manner aforesaid, yet the said A. H. not regarding his said promise and undertaking so by him made in manner and form aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said T. R. in this behalf, did not, nor would at the time when he was so requested as aforesaid, pay, nor hath he at any time since hitherto paid, the said sum of nine pounds nineteen shillings and sixpence so by him lost to the said T. R. as aforesaid, or any part thereof, to the said T. R. but he to pay the same, or any part thereof, to the said T. R. hath hitherto wholly refused, and still refuses, so to do, to wit, at L. aforesaid, in the county aforesaid. (2d count for money had and received; account stated; and common conclusion thereto.)

It may be proper to suggest, that in searching the books I can find no case which says that where the whole sum lost at one sitting amounts to 10*l.* or upwards, and must be so proved in evidence, the plaintiff can declare for and recover a less sum than 10*l.* under such evidence, and thereby evade the statute of 9. Ann. c. 14. s. 2. (upon which the action must be founded); but considering that the statute is an infringement upon the rule of common law; that it is a penal law, and not merely remedial, as by Ch. J.

Willes, in the case of *Lynal* against *Longbottom*, 2. Wils. 36. and that a recovery in an action for a sum under 10*l.* would be pleadable in bar to another action for the same wager or stake; I am not decisively of opinion that this action is not maintainable.

T. BARROW,

2. Stra. 1079. 1249. 1. Salk. 100.
3. Salk. 14. 175. S. C. 6. Mod. 128.
2. *Ld. Raym.* 1034. *Holt*, 329. 5. *Mod.*
13. 1. *Lutw.* 180. 2. *Wils.* 36. 67.
309. 1. *Wils.* 220.

Assumpsit on a wager of five guineas, that one S. T. had before a certain time bought a

KENT, to wit. Isaac Good complains of James Elliott, being in the custody of the marshal of the marshalsea of our sovereign lord the now king, before the king himself; for that whereas, on the twenty-first of June, in the year of Our Lord 1787, at waggon, and one shilling deposited.

Maidstone,

Maidstone, in the said county of Kent, a certain discourse was had and moved between the said Isaac and the said James of and concerning a certain waggon, then lately belonging to one David Coleman, and upon that discourse a certain question then and there arose, and was debated between the said Isaac and the said James, whether one Sufannah Tye had or had not before that time bought the said waggon; and upon that discourse the said James then and there asserted and affirmed, that the said Sufannah Tye had bought the said waggon, which said assertion and affirmation of the said James the said Isaac then and there wholly denied to be true; and thereupon the said James then and there betted the said Isaac the sum of five guineas of lawful money of Great Britain, against the money so betted by the said Isaac, as next hereafter-mentioned, that the said Sufannah Tye had before that time bought the said waggon; and the said Isaac then and there betted the said James the sum of five guineas against the money so betted by the said James as aforesaid, that the said Sufannah Tye had not before that time bought the said waggon; and it was then and there agreed between them, that the said bet should be decided and determined by the said David Coleman and the said Sufannah Tye; and thereupon the said Isaac and James then and there deposited each of them the sum of one shilling of like lawful money, in part of the said several respective sums of money so betted as aforesaid, in the hands of one Elizabeth Heath, to be paid by her to the said Isaac, in case the said David and Sufannah should say and determine that the said Sufannah had not before that time bought the said waggon, and to the said James, in case the said David and Sufannah should say and determine that the said Sufannah had before that time bought the said waggon: and thereupon in consideration of the premises, and also in consideration that the said Isaac, at the special instance and request of the said James, had then and there agreed with the said James, that the said Elizabeth should and might pay the said money so deposited in her hands as aforesaid to the said James, and also undertook, and faithfully promised the said James, to pay to him the said James the further sum of five pounds four shillings of like lawful money, the residue of the said sum of five guineas so betted by him the said Isaac as aforesaid, in case the said David and Sufannah should say and determine that the said Sufannah Tye had before that time bought the said waggon, the said James then and there agreed with the said Isaac, that the said Elizabeth Heath should and might pay the said money so deposited in her hands as aforesaid to the said Isaac; and also undertook, and to the said Isaac then and there faithfully promised, to pay to the said Isaac the like sum of five pounds four shillings of like lawful money, the residue of the said sum of five guineas, so betted by him the said James as aforesaid, in case the said David and Sufannah should say and determine that the said Sufannah had not before that time bought the said waggon: and the said Isaac avers, that the said Sufannah had not before that time bought the said waggon, and that afterwards, to wit, on the twenty-first day of June, in the said year of Our Lord 1787, at Maidstone aforesaid, the said David and Sufannah did say and

Mutual
promises.

and determine that the said Susannah had not before the time of the making the said last mentioned promise and undertaking of the said James bought the said waggon, whereof the said James afterwards, to wit, on the same day and year last aforesaid, at Maidstone aforesaid, had notice; whereby the said Isaac became intitled to the said money so deposited in the hands of the said Elizabeth Heath as aforesaid, and the said James became liable to pay, and ought to have paid, to the said Isaac the sum of five pounds four shillings so by the said James promised to be paid to him the said Isaac as aforesaid. [2d count same as the first, only saying nothing of the reference. 3d count same as the first, only saying nothing of the deposit, and confining it to the determination of the referees. 4th count same as first, only without either reference or deposit.] Yet the said James, not regarding his said several promises and undertakings so made as aforesaid, but contriving and fraudulently intending to deceive and defraud the said Isaac in this behalf, hath not (although often requested) paid to the said Isaac the said several sums of money so by the said James promised to be paid by him to the said Isaac as aforesaid, or any of them, or any part thereof, but to pay the same, or any of them, or any part thereof, to the said Isaac, hath hitherto altogether refused, and still doth refuse, to the damage, &c.

T. BARROW.

Declaration on
a wager on a
cock-match.

LANCASHIRE, to wit. W. B. complains against H. B. being, &c. for that whereas, on the twenty-seventh of June 1759, at Lancaster, in the said county, a cock-match was fought between two certain cocks, at which the said W. and H. were then and there present; and that while the said match remained undecided, and during the fighting of the same, to wit, on the same day and year aforesaid, at L. aforesaid, a certain cock, one of the said cocks, was then and there in a likely way of winning the said match; and thereupon, in consideration that the said W. had then and there, at the special instance and request of the said H. undertaken and faithfully promised the said H. to pay him the sum of five shillings, in case the said cock which was in a likely way of winning the said match should win the said match, he the said H. then and there undertook, and to the said W. faithfully promised, to pay to him the sum of ten pounds, in case the said cock which was so then and there in a likely way of winning the said match should lose the said match: and the said William in fact says, that afterwards, to wit, on the same day and year aforesaid, at Lancaster aforesaid, the said match was decided, and the said cock which was so in a likely way of winning the said match as aforesaid then and there lost the said match, whereof the said H. afterwards, to wit, on the same day and year aforesaid, there had notice, by reason whereof the said H. according to his said promise and undertaking, became liable to pay, and ought to have paid, to the said W. the sum of 10l. to wit, at L. aforesaid. [2d count, money had and received. Breach.]

I Am afraid this case falls within the words "other game or games," in the Statute of 3. Anne, ch. 24. Cock-

fighting is expressly mentioned in the Statute of King Charles against Gaming, and so is horse-racing; but neither of these

there is mentioned in 9. Anne; yet in the case of Goodburn and Martin, 2. Stra. 2159. the Court held horse-racing to be within the words "other game or games" in the latter statute, as it was

particularly mentioned in the 10. Car. 3. and cock-fighting must therefore be within it for the same reason.

J. WALLACE.

MIDDLESEX, to wit. George Neale complains of John Bolton, being, &c. for that whereas the said J. B. on the twelfth April 1774, at Westminster, in the said county of M. in consideration that the said G. N. at the special instance and request of the said J. B. had then and there undertaken, and faithfully promised the said J. to pay him the sum of two hundred guineas of lawful, &c. in case a certain horse called Trentham should not be ready to run a match with a certain other horse called Minister, on the (a) *twenty-fifth of April* then next ensuing, on Newmarket Heath, in the county of Cambridge, or should not run the said match with the said horse called Minister, and win the same, if the said horse called Minister should be ready to run the said match with the said horse called Trentham; or in case a certain other horse called Pumpkin should not be ready to run a match with a certain other horse called Mambrino on the thirtieth of April then next ensuing, on Newmarket Heath, or should not run the said match with the said horse called Mambrino, and win the same, if the said horse called Mambrino should be ready to run, and should run, the said match with the said horse called Pumpkin, undertook, and then and there faithfully promised, that in case both the said horses called Pumpkin and Trentham should be ready to run the said respective matches aforesaid, then if neither of the said horses called Minister and Mambrino should be ready to run the same, (b) *or if both or either of them should be ready to run, and should run, the said respective matches, or either of them, and neither of the same horses called Mambrino and Minister should win one of the said matches*, he the said J. B. should pay to the said G. N. the sum of four hundred guineas of like lawful money; and the said G. avers, that the said horses called Trentham and Pumpkin were ready to run the said respective matches with the said horses called Minister and Mambrino on the respective days aforesaid, on the said place called Newmarket Heath, and would have run the same, or either of them, had the said horses called Mambrino and Minister been ready to run both or either of the said matches; but the said horses called Minister and Mambrino were not, nor was either of them, then and there ready to run the said respective matches, or either of them; whereof the said John afterwards, to wit, on the tenth May, in the said year 1774, at Westminster aforesaid, had notice; and by reason of the premises he the said John became liable to pay to the said George the said sum of two hundred guineas. And whereas also the said defendant, on the said twelfth April, in the said year 1774, at, &c. aforesaid, in the said county, in consideration that the said plaintiff, at the like special instance and request of the said defendant, had then and there undertaken, and faithfully

For a wager on a horse-race at Newmarket.

Second count.

(a) The day on which Mr. Vernon's Minister paid forfeit to Trentham.

(b) This is omitted in the second count.

promised

promised the said defendant other two hundred guineas of like lawful money, in case a certain other horse called T. should not be ready to run a match with a certain other horse called M. on the *twenty-fifth day of April* then next ensuing, on Newmarket Heath aforesaid, or should run the said match with the said last-mentioned horse called M. and win the same, if the said last-mentioned horse called M. should be ready to run, *and should run, the said match with the said last-mentioned horse called T.* or in case a certain other horse called P. should not be ready to run a match with a certain other horse called Mambrino on *the said thirtieth April* then next ensuing, on Newmarket Heath aforesaid, or should not run the said match with the said last mentioned horse called Mambrino, and win the same, if the said horse called Mambrino should be ready to run, and should run, the said last-mentioned match with the said last-mentioned horse called P. undertook, and then and there faithfully promised the said plaintiff, that in case both the said last-mentioned horses called T. and P. should be ready to run the said respective matches as last aforesaid (a) *against the said two horses called M. and M. last-mentioned, as aforesaid,* he the said defendant would pay to him the said plaintiff other four hundred guineas of like lawful money; and the said plaintiff avers, that the said horses called T. and P. were ready to run (b) the said respective matches last aforesaid (c) *with the said last-mentioned horses called M. and M.* on the respective days last-mentioned, on the said place called Newmarket Heath, and would have run the same, or either of them, had the said last-mentioned horses called M. and M. been ready to run both or either of the (d) *said matches*; but the said last-mentioned horses called M. and M. were not, nor was either of them, then and there ready to run the said respective matches last aforesaid, or either of them; whereof the said defendant afterwards, to wit, on the tenth May, in the said year 1774, at Westminster, had notice; and by reason of the premises last aforesaid, he the said defendant became liable to pay to the said plaintiff the said sum of four hundred guineas last-mentioned. And whereas also the said defendant, on the same day and year first above mentioned, at Westminster aforesaid, in consideration that the said plaintiff, at the like special instance and request, &c. had then and there undertaken, and faithfully promised to pay him the said defendant, other two hundred guineas of like lawful money, in case a certain other horse called T. should not be ready to run a certain other match with a certain other horse called Minister, on the said twenty-fifth April then next ensuing, on Newmarket Heath aforesaid, or should not run the said last-mentioned match with the said last-mentioned horse called Minister, if the said last-mentioned horse called Minister should be ready to run the same, or in case a certain other horse called Pumpkin should not be ready to run a certain other match with a certain other horse called Mambrino, on the

Third count.

(a) This is omitted in the third count.

(b) In the third count say *their*.

(c) In the third count omit this.

(d) In the third count say *last-mentioned*.

said thirtieth April then next ensuing, on Newmarket Heath aforesaid, or should not run the said last-mentioned match with the said last-mentioned horse called Mambrino, if the said last-mentioned horse called Mambrino should be ready to run the same, undertook, and to the said plaintiff then and there faithfully promised, to pay him other four hundred guineas of like lawful money, in case the said two last-mentioned horses called M. and M. should be ready to run their respective matches as last aforesaid, or either of them; and the said plaintiff avers (as in the second count, with the alterations). Nevertheless the said defendant, not regarding his said several promises and undertakings in manner and form aforesaid made, but contriving, &c. Breach

F. BULLER.

The bet was made in writing thus:
 "I take with Mr. John Bolton, this 13th
 "April, 400 guineas to 100 guineas,
 "that Trentham and Pumpkin both
 "win." And underneath written,
 "They are to run next meeting with
 "Minister and Mambrino."

"Geo. NEALE."

Minister paid forfeit to Trentham, and
 Mambrino to Pumpkin.

I Apprehend, that neither of the above
 parties were owners of the horses intended
 to run, but that the bets were made on

the event of a match which had been
 before made; in that case the bets are
 clearly void, by the statute against gam-
 ing; and plaintiff cannot maintain any
 action.

F. BULLER.

I Do not comprehend how this bet
 could be won even if it were legal, for it
 is not made *play or pay*; and the memo-
 randum at the bottom seems to import,
 that in order to decide the bet the horses
 must run. However, as the Jockey
 Club have determined otherwise, I must
 in that submit to their superior judg-
 ment.

F. BULLER.

MIDDLESEX, ff. Stephen Hanks complains of John At-
 wood, being, &c. of a plea, &c. for that whereas, on the twenty-
 third day of May, A. D. 1774, to wit, at W. in the said county of
 M. a certain discourse was moved and had between the said S. and
 J. of and concerning a certain poney of the said S. and of and con-
 cerning the trotting of the said poney; and thereupon a certain
 wager or bet was then and there proposed and agreed on and laid
 between the said S. and the said J. to wit, of twenty-five pounds
 on each side, that is to say, the said S. did bet the said J. twenty-
 five pounds that the said poney should trot eleven miles in one suc-
 cessive hour on Monday the thirtieth day of May, in the said year
 1774, and that the said poney should carry six stone weight, and
 should start from the eighth mile stone on the Hounslow road, in
 the said county of Middlesex, and go to the thirteenth-mile-and-a-
 half stone and back again to the said eighth mile stone; and the
 said J. did then and there bet the said S. twenty-five pounds that
 the said poney did not trot the space aforesaid in the time aforesaid,
 starting as aforesaid, and carrying the weight aforesaid; and it was
 thereupon then and there, to wit, on the twenty-third day of May,
 in the year 1774 aforesaid, at Westminster aforesaid, agreed be-
 tween the said S. and the said J. that the said S. and J. should each
 of them make stakes good, that is to say, should deposit such re-
 spective sums of twenty-five pounds and twenty-five pounds in the
 hands of one William Galley before or on the twenty-eighth day
 of May in the said year, those two respective sums of twenty-five

Declaration in
 assumpsit B.R.
 on an agree-
 ment to make
 stakes good on a
 wager concern-
 ing the trotting
 of a horse, to
 carry a certain
 weight, or for-
 feit eight gui-
 neas.

pounds and twenty-five pounds, to be by him the said William Galley paid to the winner, after the determination of the wager or bet; but if either of the said parties (to wit, the said J. or S.) should refuse making stakes to the said W. G. (that is to say, should refuse to deposit the sum of twenty-five pounds aforesaid in the hands of the said W. G. for the purpose aforesaid), on the said twenty-eighth day of May, that then and in such case the party so refusing should forfeit and pay to the other party the sum of eight guineas: and the said agreement being so made, he the said S. afterwards, to wit, on the said twenty-third day of May, in the year aforesaid, at W. aforesaid, at the special instance and request of the said John, undertook, and faithfully promised the said J. to perform and fulfil the said agreement in all things therein contained on his part and behalf to be performed and fulfilled; and in consideration thereof, he the said J. afterwards, to wit, on the day and year last mentioned, at W. aforesaid, undertook, and faithfully promised the said S. to perform and fulfil all things in the said agreement contained on his part and behalf to be performed and fulfilled. And the said S. avers, that although he the said S. was ready and willing to do and perform every thing in the said agreement contained on his part and behalf to be done and performed, and although he the said S. did, on the twenty-eighth day of May in the said year 1774, make stakes good to the said W. G. (to wit, by depositing in his hands the said sum of twenty-five pounds, so to be by him the said Stephen deposited for the purpose aforesaid,) according to the tenor and effect of the said agreement, and of his aforesaid promise and undertaking so by him made in this behalf as aforesaid; yet the said J. did not, on the said twenty-eighth day of May in the said year 1774, make stakes good to the said W. G. (to wit, by depositing in the hands of the said W. G. the said twenty-five pounds, so to be by him the said J. deposited in the hands of the said W. G. for the purpose aforesaid,) but therein wholly failed and made default, to wit, at Westminster aforesaid; by means of which said premises, the said J. afterwards, to wit, on the twenty-ninth day of May in the year aforesaid, at Westminster aforesaid, forfeited and became liable to pay, and ought to have paid, to the said S. the sum of eight guineas, according to the tenor and effect of the said agreement, and of his said promise and undertaking so by him made in this behalf as aforesaid, whereof the said J. afterwards, to wit, on the day and year last mentioned, at W. aforesaid, had notice. (2d Count, to deposit twenty-five pounds, and if did not make deposit good, bet to be off.) Yet the said J. not regarding his said several promises and undertakings so by him made in this behalf as aforesaid, but contriving, &c. to deceive and defraud the said S. in this behalf, hath not as yet paid the said two several sums of eight guineas and eight guineas, or any part thereof, (although so to do he the said J. was requested by the said S. afterwards, to wit, on the day and year last mentioned, and often afterwards, to wit, at W. aforesaid,) but he to pay the same, or any part thereof, to the said S. hath hitherto wholly refused, and still refuses, so to do. Pledges, &c.

MIDDLESEX, *vs.* George Forbes complains of Dennis O'Kelly, being, &c. for that whereas at the time of the making the agreement hereafter next mentioned, and at the time of the making of the promise and undertaking of the said Dennis hereafter next mentioned, a certain horse-race was intended to be run soon afterwards, to wit, on, &c. then next following, by and between certain horses, that is to say, by and between a certain horse called by the name of, &c. (and which said horse then was, or was then reputed to be the property of, and belonging to, &c.) and a certain other horse commonly called by the name of, &c. (and which said last mentioned horse then was, or was then reputed to be the property of, and to belong to, the said Dennis) and a certain other horse called by the name of Quill, (and which said last mentioned horse then was, or was then reputed to be the property of, and to belong to, a certain person commonly called Lord Abingdon), at a certain place called Abingdon, in the county of Berks, over and upon a certain place then called Abingdon plain, for certain stakes or sums of money of a large value, to wit, of the value of three hundred guineas, that is to say, of the value of three hundred and fifteen pounds, of lawful, &c. commonly called a sweepstakes, to wit, at Westminster, in said county of Middlesex: and whereas on, &c. to wit, at Westminster aforesaid, a certain discourse was had and moved, by and between the said George and the said Dennis, of and concerning the said horse-race so as aforesaid intended to be run at Abingdon aforesaid, in the county of Berks aforesaid, and also of and concerning the said horses so as aforesaid intended to run for the same; and in that discourse he the said George then and there, to wit, at Westminster aforesaid, averred, that the said horse so called by the name of, &c. (Kelly's) would beat the said horse called Quill, and win in the said horse-race so as aforesaid intended to be run at A. aforesaid, in the said county of Berks, the said sweepstakes, to wit, the said sum of three hundred and fifteen pounds; and the said Dennis then and there, to wit, at W. aforesaid, averred that the said horse so called by the name of, &c. (Kelly's) would not beat the said horse called Quill, nor win in the said horse-race so as aforesaid intended to be run at A. in the said county of B. the said sweepstakes, to wit, the sum of three hundred and fifteen pounds, but that the said horse so called by the name of Quill would, in the said intended horse-race, beat the said horse so called by the name of, &c. (Kelly's) and win in the said intended horse-race the said sweepstakes, to wit, at W. aforesaid; it was agreed by and between the said George and the said Dennis, that the said Dennis should pay unto him the said George a large sum of money, to wit, the sum of one hundred and twenty guineas, that is to say, the sum of one hundred and twenty-six pounds of lawful, &c. if the said horse so called by the name of, &c. (Kelly's) as aforesaid should beat the said horse called Quill, and win in the said horse-race, so as aforesaid intended to be run at A. aforesaid, in the county of B. the said sweepstakes, to wit, the said sum of three hundred and fifteen pounds, and that in case the said horse so called by the name of, &c. (Kelly's)

In B. R. for money on a wager at a horse-race.

should not beat the said horse called Quill, nor win in the said horse-race, so as afore said intended to be run at A. in the said county of Berks, the said sweepstakes, to wit, the said sum of three hundred and fifteen pounds, but that the said horse so called by the name of Quill should in the said intended horse-race beat the said horse so called by the name of, &c. (Kelly's) and win in the said intended horse-race the said sweepstakes, then that the said George should pay unto the said Dennis the like sum of one hundred and twenty guineas, to wit, the sum of three hundred and fifteen pounds, of lawful, &c. to wit, at Westminster afore said. And the said agreement being so made (mutual promises, &c.); and the said George avers that the said horse race so as afore said intended to be run at A. in the said county of B. was afterwards, to wit, on the said, &c. (first mentioned day) run by and between the said horse so called by the name of Piper (Kelly's) and the said horse called by the name of Quill only, the said, &c. having paid forfeit to excuse the said horse called, &c. from running the said race of A. in the said county of B. to wit, over and upon the said place there called Abingdon-plain, for the said sweepstakes, to wit, for the said sum of three hundred and fifteen pounds; and that the said horse so called by the name of, &c. (Kelly's) as afore said, did then and there in the said horse-race beat the said horse called Quill, and did then and there win in the said horse-race so run at A. in the said county of B. the said sweepstakes, to wit, the said sum of three hundred and fifteen pounds, to wit, at W. afore said: by means whereof he the said Dennis then and there, according to the tenor of his said promise and undertaking, became liable to pay, and ought to have paid, to the said George, the said sum of one hundred and twenty guineas, to wit, the said sum of one hundred and twenty-six pounds, of lawful, &c. of all which said premises he the said Dennis afterwards, to wit, on the said, &c. (the day on which the race was run) in the year afore said, to wit, at W. afore said, had notice. (Second Count as first, only leaving out every thing relative to &c.'s horse, and making the bet that Piper would beat Quill. Third Count as first, only that Piper would beat. Fourth Count as second, only that Piper would win, &c. Fifth Count, money lent, laid out, had and received, and common conclusion.) C. RUNNINGTON.

R. R. Assumpsit on a wager respecting the duty on hops.

MIDDLESEX, *ss.* John Atherfold complains of French Christopher and Michael Helmden, being, &c. of a plea of trespass on the case, &c. for that whereas on the 4th day of December A. D. 1773, at Westminster, in the said county of Middlesex, a certain discourse was had and moved between the said French, and the said Michael, and the said John, of and concerning the duty upon hops for the said year 1773, and how much the same would amount unto, and upon that discourse the said French and Michael asserted and affirmed that the duty on hops for the said year 1773 would amount unto the sum of forty-six thousand pounds, which assertion and affirmation of the said French and Michael the said John then and there denied; and thereupon afterwards, to wit, on the 4th day of December, in the year

year 1773 aforesaid, at Westminster aforesaid, in consideration that the said John, at the special instance and request of the said French and the said Michael *should pay* unto the said French ^[had paid.] and the said Michael the sum of ten pounds and ten shillings, they the said French and Michael then and there undertook, and faithfully promised the said John to pay unto him the said John upon the sixth day of July, which should be in the year 1774, the sum of one hundred and five pounds, if the duty was not forty-six thousand pounds, for hops that year 1773; and the said [John in fact saith, that he, confiding in the said promise and undertaking of the said French and the said Michael so made aforesaid, afterwards, to wit, on the said 4th day of December, in the year 1773 aforesaid, at Westminster aforesaid, did pay unto the said French and Michael the said sum of ten pounds and ten shillings; and the said] John in fact *farther* saith, that the duty upon hops for the said year ^[farther.] 1773 was not, nor did the same amount unto forty-six thousand pounds, but a less sum, to wit, the sum of forty-five thousand eight hundred and fifty-seven pounds and no more, to wit, at Westminster aforesaid; whereof the said French and the said Michael afterwards, to wit, on the 1st July, in the year 1774 aforesaid, at W. aforesaid, had notice: by reason of which said premises the said French and the said Michael, according to the tenor of their aforesaid promise and undertaking so by them made in that behalf as aforesaid, became liable to pay, and ought to have paid, to the said John the sum of one hundred and five pounds, on the said 6th day of July, in the year 1774, to wit, at W. aforesaid. (Add another Count, leaving out what is within the brackets, and insert instead thereof what is in the margin.)

CAMBRIDGESHIRE, §. ——— Townsland late of, &c. was attached to answer unto Thomas Adcocks in a plea of trespass on the case, &c. and thereupon, &c. for that whereas at the time of the making of the promise and undertaking of said defendant, hereafter next mentioned, a certain race was then shortly to be run between the right honourable the Earl of March and Keiglin of the one side, and T. Toffe esquire and ——— Sprowle on the other side, by a certain four-wheel carriage drawn by four horses, with a person sitting in or upon the said carriage, on and upon a certain place called Newmarket Heath, at Newmarket, in the county of Cambridge, for a large sum of money; and if the said carriage should in that race be drawn with the said cattle, and the person sitting in or upon the said carriage, nineteen miles within the space of one hour, then the said Earl was to win the said race; but if the said carriage should not in that race be drawn, with the said person so sitting in or upon the same, by the said cattle, nineteen miles within the space of one hour, then the said T. Toffe and ——— Sprowle were to win the said race. And whereas on the day of A. D. 1750, at Newmarket aforesaid, a certain discourse was moved and had by and between the said plaintiff and said defendant, of and concerning the said race so to be run as aforesaid, and upon that discourse the said plaintiff, on the same day and year aforesaid, at Newmarket aforesaid, at the

Assumpsit by original in B. R. on a wager respecting the New-market carriage-race.

special instance and request of the said defendant, undertook, and then and there faithfully promised the said defendant to pay him eight pounds, in case the said Earl should not win in the said race; and in consideration thereof, the said defendant undertook, and then and there faithfully promised the said plaintiff to pay him ten pounds, in case the said Earl should win the said race; and said plaintiff avers that the said race was run afterwards, to wit, on the day of A. D. 1750^o afore said, upon the said place called Newmarket Heath, and that the said Earl did then and there win the said race, to wit, at Newmarket afore said; and of all which said premises the said defendant then and there had notice: Yet, &c, (Common conclusion for the ten pounds, say he was requested same day and year, at afore said, &c.) There were other Counts; but I know not how they varied from this. V. LAWES,

Declaration on a wager whether Sir H. H. bart. would be called to the house of peers.

NORFOLK, to wit. John Barker late of A. was attached to answer H. B. in a plea of trespass on the case, &c. and whereupon the said H. by A. B. his attorney, complains, for that whereas, on the 1st January 1785, at A. in the said county, a certain discourse was had and moved by and between the said John and Henry of and concerning one sir H. Harbord baronet, and upon that discourse the said Henry did then and there assert and affirm, that the said sir H. H. baronet would be (1) *called to the house of peers*; which said assertion and affirmation of the said Henry, he the said John did then and there wholly deny; whereupon the said

(1) In 2d Count created a peer. In the 3d Count made a peer.

John afterwards, to wit, on, &c. at, &c. in consideration that the said Henry, at the special instance and request of the said John, had then and there paid to him the sum of one guinea, undertook, and to the said H. then and there faithfully promised, to pay to him the sum of one hundred guineas, if the said sir H. H. baronet (2) *was called to the house of peers*; and the said Henry in fact says, that the said sir H. H. afterwards, and after making of the said promise and undertaking so made as afore said, to wit, on the eighth day of August 1786, at, &c. was (3) *created a peer, and was then and there called to the house of peers*, whereof he the said John afterwards, to wit, on, &c. at, &c. had notice; by reason whereof he the said John, according to the form and effect of his said promise and undertaking, became liable to pay, and ought to have paid to the said Henry the said sum of one hundred guineas, to wit, at, &c. And whereas also (same as first Count, leaving out the words in italic.) And whereas also (same as first Count, leaving out the words in italic, and observing the marginal notes; money lent and advanced, had and received; and breach). Drawn by J. GRAHAM.

(2) In 2d Count "should be created a peer." In 3d Count should be made a peer. (3) In 3d Count "made." 2d Count. 3d Count.

Declaration in assumpsit for money won at cards, at suit of the winner against the loser (a).

LONDON, s. Lancelot Doubiggin, late of London, surveyor, was attached to answer unto James Smith in a plea of trespass on the case; and thereupon said plaintiff, by A. B. his attorney, complains, that whereas heretofore, to wit, on, &c. at, &c,

(a) Vide the case of Smith v. Ary, 3. 81, 258. Holt, 329. 5. Mod. 13, Salk. 14. 6. Mod. 128. 12. Mod. 69, 79, 1. Lutw. 180.

in consideration that the said plaintiff, at the special instance and request of the said defendant, had then and there agreed and undertaken, and faithfully promised said defendant, to play at cards with him said defendant, and to pay him such sum or sums of money as he the said plaintiff should lose to said defendant, by means of his so playing with him said defendant as aforesaid, when he the said plaintiff should be thereto requested, he the said defendant then and there, to wit, on the day and year aforesaid, at, &c. aforesaid, agreed to play at cards with him the said plaintiff, and to pay to him the said plaintiff all such sum or sums of money as he said defendant should lose to said plaintiff by means of his so playing with said plaintiff as aforesaid, when he the said defendant should be thereto afterwards requested; and said plaintiff avers, that he, confiding, &c. did afterwards, to wit, on the day and year aforesaid, at L. &c. aforesaid, play at cards with said defendant, who did also then and there play at cards with him said plaintiff; and although said defendant, by means of his so playing at cards with said plaintiff as aforesaid, did then and there lose to him said plaintiff, who did then and there win of and from the said defendant divers sums of money, in the whole amounting to a large sum of money, to wit, the sum of nine pounds nineteen shillings and sixpence of lawful, &c. whereof no part was then and there paid to said plaintiff; and although said defendant was requested by said plaintiff to pay him said sum of money so by him lost to said plaintiff in manner aforesaid, yet the said defendant, not regarding, &c. but contriving, &c. to deceive, &c. said plaintiff in this behalf, did not, nor would at said time, when he was so requested as aforesaid, pay, nor hath he at any time hitherto paid said sum of nine pounds nineteen shillings and sixpence, so by him lost to said plaintiff, or any part thereof, to him said plaintiff, but to pay the same, or any part thereof, to said plaintiff, hath hitherto wholly refused, and still refuses so to do, to wit, at L. aforesaid. (Count for money had and received, &c. *in simul computasset*; and common conclusion.) *Drawn by MR. TIDD,*

In the County Court of Lancaster.

LANCASHIRE, *ss.* Thomas Raby, by virtue of his Majesty's writ of justices, was attached to answer to Joseph Wigney in a plea of trespass on the case, to the damage of the said Joseph of ten pounds, and there are pledges to prosecute, to wit, John Doe and Richard Roe; and whereupon the said Joseph by A. B. his attorney complains, for that whereas heretofore, to wit, on the first October A. D. 1787, at Manchester, in the county of Lancaster, and within the jurisdiction of the said court, it was agreed by and between the said Thomas and the said Joseph, that they the said Thomas and Joseph should soon afterwards, that is to say, at the hour of ten of the clock of the morning of the next day, meet and play together at a certain game and pastime, that is to say, a certain pastime called the Game of Bowls, upon a certain place called a Bowling Green, situate at M. aforesaid,

Declaration in county court by justices for 2l. 2s. won in a bet of bowls of two to one, play or pay.

in the county and jurisdiction aforesaid; and thereupon, in consideration thereof, and also in consideration that the said Joseph, at the special instance and request of the said Thomas, had then and there undertaken, and faithfully promised the said Thomas, to pay him one guinea, (that is to say, one pound and one shilling, of lawful, &c.) if the said Thomas would beat the said Joseph in the said intended game, (play or pay,) whenever after the determination thereof he the said Joseph should be thereunto requested, he the said Thomas undertook, and then and there faithfully promised the said Joseph to pay him, the said Joseph, two guineas, (that is to say, the sum of two pounds and two shillings, of like lawful money,) if the said Joseph should beat the said Thomas in the said intended game, (play or pay,) whenever after the determination thereof he the said Thomas should be thereunto requested; and the said Joseph in fact says, that afterwards, to wit, at the said day, time, and place, appointed for playing and determining the said intended game, to wit, at M. aforesaid, in the county and jurisdiction aforesaid, the said Joseph was ready and willing, and then and there attended, and tendered, and offered himself against the said Thomas, to play the said game with him, according to the tenor and effect of the said agreement; but that the said Thomas did not, nor would then attend and play the said game with the said Joseph, but then and there neglected and refused so to do, and therein, and then and there wholly neglected and made default therein; whereby, and by reason whereof, and according to the tenor and effect of the said promise and undertaking of the said Thomas, he the said Thomas then and there became liable to pay to the said Joseph the said sum of two pounds and two shillings, whenever afterwards he the said Thomas should be thereto requested: Yet the said Thomas, not regarding his said promise and undertaking so by him made as aforesaid, but contriving, and fraudulently intending, craftily and subtilly to deceive and defraud the said Joseph in this behalf, hath not paid the sum of two pounds and two shillings, or any part thereof, to the said Joseph, (although so to do, he the said Thomas was requested by the said Joseph afterwards, to wit, on the third day of the said month of October, in the year aforesaid, and often afterwards, to wit, at M. aforesaid, within the county and jurisdiction aforesaid,) but he so to do hath hitherto wholly refused and still refuses. (2d Count, money had and received; and common conclusion.) Damages ten pounds. Suit, &c.

THO. BARROW,

ON FEIGNED ISSUES.

YORKSHIRE, to wit. Be it remembered, that on Friday

Feigned issue to try a right of common in respect of plaintiff's freehold and copyhold estates on certain waste grounds inclosed by act of parliament, brought by a claimant against one of the commissioners for inclosing by virtue of a clause in the said act.

next after eight days from the day of St. Hilary in this same Term, before our lord the king at Westminster, comes John Braithwaite,

by

by John Damborough his attorney, and brings into the court of our said lord the king, before the king himself now here, his certain bill against John Bradford, being in the custody of the marshal of the marshalsea of our lord the now king, before the king himself, of a plea of trespass on the case, and there are pledges for the prosecution, to wit, John Doe and Richard Roe, which said bill follows in these words, to wit: Yorkshire, to wit, John Braithwaite complains of John Bradford, being in the custody, &c. for this, to wit, that whereas on the first day of January A. D. 1795, at the township of Skelton in the said county of York, a certain discourse was moved and had by and between the said John Braithwaite and John Bradford, of and concerning a certain act of parliament made and passed in the thirty-fourth year of the reign of our said lord the present king, intituled, "An act for dividing and inclosing the open common fields, inges, moors, commons, and waste grounds within the township of Skelton, in the canon fee, manor, and parish of Ripon, in the West Riding of the county of York," and of and concerning the moors, commons and waste grounds, by the said act intended to be divided and inclosed, and the rights of common thereupon; and upon that discourse a certain question then and there arose, and was debated between the said plaintiff and the said defendant, whether the said plaintiff was entitled to a right of common in and upon the said moors, commons and waste grounds, for or in respect of the several freehold and copyhold tenements in the town of Skelton aforesaid, of him the said John Braithwaite, hereinafter mentioned, that is to say, one freehold messuage, or scite of a messuage, late Parker's, and known by the name of Terrel's Garth; one other freehold messuage, or scite of a messuage, late Parker's, and known by the name of Rigg Garth; one freehold messuage, or scite of a messuage, called Rapers; one copyhold cot, or scite of a cottage; five copyhold messuages, or scite of messuages, in Scruton Gates; or for or in respect of any of the same freehold or copyhold tenements; and thereupon the said plaintiff then and there asserted and affirmed to the said defendant, that he the said plaintiff was entitled to right of common in and upon the said moors, commons, and waste grounds, for and in respect of all the said freehold and copyhold tenements of him the said plaintiff, which said assertion and affirmation of the said John Braithwaite the said John Bradford then and there wholly denied; and thereupon afterwards, to wit, on the same day and year aforesaid, at the township of Skelton aforesaid, in the county aforesaid, in consideration that the said John Braithwaite, at the special instance and request of the said John Bradford, had then and there paid to the said John Bradford the sum of nine pounds of lawful money of Great Britain, the said John Bradford undertook, and then and there faithfully promised the said John Braithwaite to pay him the sum of forty shillings if the said plaintiff was entitled to a right of common in and upon the said moors, commons, and waste grounds, for and in respect of the said first mentioned freehold tenement of him the said plaintiff; and the further sum of forty

forty shillings, if the said John Braithwaite was entitled to a right of common in and upon the said moors, commons, and waste grounds, for and in respect of the said freehold tenement of the said plaintiff secondly above mentioned; and the further sum of forty shillings, if the said plaintiff was entitled to right of common in and upon the said moors, commons, and waste grounds, for and in respect of the said freehold tenement of the said plaintiff thirdly above mentioned; and also the further sum of forty shillings, if the said plaintiff was entitled to a right of common in and upon the said moors, commons, and waste grounds, for and in respect of the said first mentioned copyhold tenement of the said plaintiff; and the further sum of forty shillings, for each of the said five last mentioned copyhold tenements of the said plaintiff, for and in respect of which the said plaintiff was entitled to right of common in and upon the said moors, commons, and waste grounds, if the said plaintiff was entitled to such right of common for and in respect of the said five last mentioned tenements, or any of them: and the said plaintiff avers, that he the said plaintiff then was and is entitled to right of common in and upon the said moors, commons, and waste grounds, for and in respect of each and every of the said freehold and copyhold tenements of him the said plaintiff, to wit, at the township of Skelton aforesaid, in the county aforesaid, whereof the said defendant afterwards, to wit, on the same day and year aforesaid, at the township of S. aforesaid, had notice; and by reason of the premises aforesaid, the said defendant then and there became liable to pay, and ought according to his said promise and undertaking to have paid to the said plaintiff the sum of eighteen pounds, to wit, the sum of forty shillings for each of the said several freehold and copyhold tenements of the said plaintiff, for and in respect of which the said plaintiff was entitled to such right of common as aforesaid: Yet the said defendant, not regarding his said promise and undertaking so made in that behalf as aforesaid, but contriving and fraudulently intending, craftily and subtilly to deceive and defraud the said plaintiff in this behalf, hath not, although often requested, paid the sum of eighteen pounds, or any part thereof, to the said plaintiff, but to pay the same, or any part thereof, to the said plaintiff, hath hitherto wholly refused, and still doth refuse, to the said plaintiff his damage of twenty pounds; and therefore he brings his suit, &c.

Alia.

And the said defendant, by A. B. his attorney, comes and defends the wrong and injury when, &c. and says, that the said plaintiff ought not to have or maintain his aforesaid action thereof against him, because he says, that true it is that such discourse was had and moved, and that such question arose and was debated between the said plaintiff and the said defendant, and that the said defendant did undertake and promise in manner and form as the said plaintiff hath above in his said declaration alledged; but the said defendant further says, as to the sum of forty shillings, part
of

of the said eighteen pounds in the said declaration mentioned, the said plaintiff was not entitled to such right of common in and upon the said moors, commons, and waste grounds, for and in respect of the said freehold tenement of the said plaintiff, as the said plaintiff hath in his said declaration above alledged; and of this the said defendant puts himself upon the country; and the said plaintiff doth the like: and as to the sum of forty shillings, other part of the said sum of eighteen pounds, in the said declaration mentioned, the said defendant says, that the said plaintiff was not entitled to such right of common in and upon the said moors, commons, and waste grounds, for and in respect of the said freehold tenement of the said plaintiff secondly above mentioned, as the said plaintiff hath in his said declaration above alledged; and of this the said defendant puts himself upon the country; and the said plaintiff doth the like: and as to the said sum of forty shillings, other part of the said sum of eighteen pounds, in the said declaration mentioned, the said defendant says, that the said plaintiff was not entitled to such right of common in and upon the said moors, commons, and waste grounds, for and in respect of the said freehold tenements of the said plaintiff thirdly above mentioned, as the said plaintiff hath in his said declaration above alledged; and this the said defendant prays may be inquired of by the country; and the said plaintiff doth the like: and as to the sum of forty shillings, other part of the said sum of eighteen pounds, in the said declaration mentioned, the said defendant says, that the said plaintiff was not entitled to such right of common in and upon the said moors, commons, and waste grounds, for and in respect of the said copyhold tenement of the said plaintiff first above mentioned, as the said plaintiff hath in his said declaration above alledged; and of this the said defendant puts himself upon the country; and the said plaintiff doth the like: and as to the sum of ten pounds, residue of the said sum of eighteen pounds, in the said declaration mentioned, the said defendant says, that the said plaintiff was not entitled to such right of common in and upon the said moors, commons, and waste grounds, for and in respect of the said five copyhold tenements of the said plaintiff, in the said declaration lastly above mentioned, or of any of them, as the said plaintiff hath in his said declaration lastly above alledged; and of this the said defendant puts himself upon the country; and the said plaintiff doth the like. Therefore let a jury thereupon come before our lord the king, at Westminster, on next, after twelve, &c. by whom, &c. and who neither, &c. because as well, &c. the same day is given to the said parties, at the same place, &c.

GRO. WOOD.

DEVONSHIRE. Declaration states, that whereas plaintiff, Feigned issue in
on the 1st May 1791 and long before, was and still is an house- C. B. between
of Poole and an householder within the borough right of common on the corporation lands, *vid nem.*

holder,

Name and style
of the corpora-
tion.

Plaintiff asserts
and affirms.

holder, inhabiting and residing within the borough and county of the town of Poole, and paying scot and lot there. And whereas also defendant afterwards, to wit, on the day and year aforesaid, and long before, was and still is lawfully entitled, under and by virtue of a certain prescriptive right of common of pasture in and upon a certain waste or common, called Canford Heath, situate in the parish of Great Canford, in the county of Dorset, for all his commonable cattle, levant and couchant, upon a certain messuage, farm, and lands, with the appurtenances, situate and being at Kingston, within the said parish of Great Canford, in the county of Dorset, and also to cut and carry away furze and heath off and from the said waste or common called Canford Heath, for his necessary fuel to be burned and consumed in the said messuage, with the appurtenances, every year, at all times of the year, as need or occasion hath been and required. And whereas also afterwards, to wit, on the day and year aforesaid, at Tiverton, in the said county of Devon, a certain discourse was moved and had between plaintiff and defendant of and concerning a certain body politic corporate, incorporated heretofore by divers names of incorporation, that is to say, by the name of Mayor and Burgesses, and of Mayor, Bailiffs, and Burgesses, and of Mayor, Bailiffs, Burgesses, and Inhabitants of the Town of Poole, and now by the name of The Mayor, Bailiffs, Burgesses, and Commonalty of the Town, and of and concerning a certain right which each and every of the members of that body politic and corporate, from time whereof the memory of man is not to the contrary, have respectively had, and for all the time last aforesaid of right ought to have had, and still of right ought to have, for themselves and every of them, to turn in and depasture their commonable cattle, levant and couchant, within the said borough and county, upon said waste or common called Canford Heath, and to cut and carry away furze and heath off and from the said waste or common called Canford Heath, for necessary fuel to be burned and consumed in their respective messuages or dwelling-houses within the said borough and county of the town of Poole, every year, at all times of the year, as need or occasion hath been or required; and also whether plaintiff, by being such householder, inhabiting and residing within the borough and county of the town of Poole, and paying scot and lot there as aforesaid, was a part or a member of the aforesaid body politic and corporate, and therefore entitled to turn in and depasture his commonable cattle, levant and couchant, within the said borough and county, upon said waste or common called Canford Heath, and to cut and carry away furze and heath off and from the said waste or common, in manner and form as the members of the aforesaid body politic and corporate have been and still are respectively entitled to do as aforesaid: And upon that discourse plaintiff then and there *asserted and affirmed, that by being such householder*, inhabiting and residing within the borough and county of the town of Poole, and paying scot and lot there as aforesaid, he the said plaintiff was a part or member of the aforesaid

aforesaid body politic and corporate, and therefore entitled to turn in and depasture his commonable cattle, levant and couchant, within the said borough and county, upon said waste or common called Canford Heath, and to cut and carry away furze and heath off and from said waste or common, in manner and form as all and every the members of the aforesaid body politic and corporate are respectively entitled to do as aforesaid; *which said assertion* and affirmation of plaintiff, defendant then and there wholly contradicted and denied: *and thereupon afterwards*, to wit, on the same day and year aforesaid, at T. aforesaid, in the county aforesaid, in consideration that plaintiff, at the special instance and request of defendant, had undertaken, and then and there faithfully promised said defendant, to pay him the sum of ten pounds ten shillings of lawful money of Great Britain, if the plaintiff, by being such householder, inhabiting and residing within the borough and county of the town of Poole, and paying scot and lot there as aforesaid, was not a part or member of the aforesaid body politic and corporate, and therefore not entitled to turn in and depasture his commonable cattle, levant and couchant, within the said borough and county, upon said waste or common called Canford Heath, and to cut and carry away furze and heath off and from said waste or common called Canford Heath, in manner and form as all and every the members of the aforesaid body politic and corporate are respectively entitled to do; *and plaintiff avers*, that by being such householder, inhabiting and residing within the borough and county of the town of Poole, and paying scot and lot there as aforesaid, he the said plaintiff was a part or member of the aforesaid body politic and corporate, and therefore was entitled to turn in and depasture his commonable cattle, levant and couchant, within the said borough and county, upon said waste or common called Canford Heath, and to cut and carry away furze and heath off and from said waste or common, in manner and form as all and every the other members of the aforesaid body politic and corporate are respectively entitled to do; by reason whereof, and according to the said promise and undertaking of defendant so made as aforesaid, he said defendant became liable to pay plaintiff said sum of ten pounds ten shillings, to wit, at T. aforesaid, in the county of Devon aforesaid, whereof defendant afterwards, to wit, on the day and year aforesaid, there had notice. And whereas also plaintiff, on said first of May 1791, and before, was and still is an householder, inhabiting and residing within the borough and county of the town of Poole, and paying scot and lot there: and whereas also defendant afterwards, to wit, on the same day and year last aforesaid, and long before, was and still is lawfully entitled, under and by virtue of a certain prescriptive right, to common of pasture in and upon said waste or common called Canford Heath for all his commonable cattle, levant and couchant, upon a certain messuage, farm, and lands, with the appurtenances, situate and being at Kingston, within the said parish of Great Canford, in the county of Dorset, and also to cut and carry away furze and heath off and

Defendant &c.
nies.

Promissa.

Plaintiff avers
that he is.

2d Count.

and from said heath or common for his necessary fuel to be burned and consumed in his said last-mentioned messuage, with the appurtenances, every year, at all times of the year as occasion hath been and required: and whereas also afterwards, to wit, on the same day and year aforesaid, at T. aforesaid, in the county of Devon, a certain other discourse was moved and had between plaintiff and defendant of and concerning a certain body politic and corporate, incorporated heretofore by divers names of incorporation, that is to say, by the name of Mayor and Burgessees, and of Mayor, Bailiffs, and Burgessees, and of Mayor, Bailiffs, Burgessees, and Inhabitants of the Town of Poole, and now by the name of the Mayor, Bailiffs, Burgessees, and Commonalty of the Town of Poole, and of and concerning a certain right which each and every the members, body politic and corporate, from time whereof the memory of man is not to the contrary, have respectively had, and for all the time last aforesaid of right ought to have had, and still of right ought to have, for themselves and every of them, to turn in and depasture their commonable cattle, levant and couchant, within the said borough and county of the town of Poole, upon said waste or common called Canford Heath, and to cut and carry away furze and heath off and from said waste and common for necessary fuel to be burned and consumed in their respective messuages or dwelling-houses within said borough and county of the town of Poole, every year and at all times of the year as need or occasion hath been and required; and also whether plaintiff, by being such householder, inhabiting and residing within the borough and county of the town of Poole, and paying scot and lot there as last aforesaid, was a part or member of the last-mentioned body politic and corporate, [(a) within the intent and meaning of the word or term *burgenses* or burgessees, mentioned and made use of in the several acts of parliament, charters, and grants made and granted to the last-mentioned body politic and corporate, prior to the making and granting of a certain charter made and granted to that body politic and corporate by our late sovereign queen Elizabeth, on the twenty-third of June which was in the tenth year of her reign, and in the year 1568, and within the intent and meaning of the word *communitas* or commonalty mentioned and made use of in the said charter of our said late sovereign queen Elizabeth, and in other grants and charters which have been from time to time made and granted to the said last-mentioned body politic and corporate subsequently to the making and granting of that charter, and therefore entitled to turn in and depasture his commonable cattle upon said last-mentioned waste or common, in manner and form as all and every the members of the said last-mentioned body politic and corporate are respectively entitled to do as last aforesaid]; and upon that discourse plaintiff afterwards, to wit, on first of May 1791, at Tiverton

Whether plaintiff by being such householder, &c. came within a term *burgenses*, &c.

or *communitas*, &c.

(a) What is inserted within brackets not in the first Count.

aforesaid, in the county aforesaid, asserted and affirmed, that by being such householder, inhabiting and residing within the borough and county of the town of Poole, and paying scot and lot there as last aforesaid, the said plaintiff was a part or member of the last-mentioned body politic and incorporate, within the intent and meaning of the word *burgenses* or burgesses mentioned and made use of in the several acts of parliament, charters, and grants made and granted to the last-mentioned body politic and corporate, prior to the making and granting of the said charter of our late sovereign queen Elizabeth, and within the intent and meaning of the word *communitas* or commonalty mentioned and made use of in the said charter of our said late sovereign queen Elizabeth, and in the acts of parliament and other grants and charters which from time to time have been made and granted to the said last-mentioned body politic and corporate subsequently to the making and granting of the said charter of our said late sovereign queen Elizabeth, and therefore entitled to turn in and depasture his commonable cattle upon said last-mentioned waste or common called Canford Heath, and to cut and carry away furze and heath off and from the said waste or common, in manner and form as all and every the members of the said last-mentioned body politic and corporate are respectively entitled to do as last aforesaid; which said last-mentioned assertion and affirmation of plaintiff he said defendant then and there wholly contradicted and denied: and thereupon afterwards, to wit, on said first of May 1791, at T. aforesaid, in consideration that plaintiff, at the special instance and request of defendant, had undertaken, and to defendant then and there faithfully promised, to pay to him the sum of ten pounds ten shillings of lawful money of Great Britain, if he the said plaintiff, by being such householder, inhabiting and residing within said borough and county of the town of Poole, and paying scot and lot there as last aforesaid, was not a part or member of the last-mentioned body politic and corporate, within the intent and meaning of the several words or terms of *burgenses* or burgesses, and *communitas* or commonalty, so respectively mentioned and made use of in the several respective acts of parliament, grants, and charters which have from time to time been made and granted to the said last-mentioned body politic and corporate, in manner as aforesaid, and therefore not entitled to turn in and depasture his commonable cattle upon the said last-mentioned waste or common called Canford Heath, and to cut and carry away furze and heath off and from the said waste or common in manner and form as all and every the members of the said last-mentioned body politic and corporate are respectively entitled to do as last aforesaid; he said defendant undertook, and to plaintiff then and there faithfully promised, to pay him the sum of ten pounds ten shillings of like lawful money, if he said plaintiff, by being such householder, inhabiting and residing within the borough and county of the town of Poole, and paying scot and lot there as last aforesaid, was a part or member of the said last-mentioned body politic and corporate, within the intent and meaning of

Plaintiff asserts and affirms.

Defendant denies.

Plaintiff avers
that he is with-
in the meaning,
&c.

of the said several words or terms of *burgenfes* or *burgesses*, and *communitas* or commonalty, so respectively mentioned and made use of in the several and respective acts of parliament, grants, and charters which have from time to time been made and granted to the last-mentioned body politic and corporate, and in manner as aforesaid, and therefore entitled to turn in and depasture his commonable cattle upon said last-mentioned waste or common called Canford Heath, and to cut and carry away furze and heath off and from the said waste or common, in manner and form as all and every the members of the said last-mentioned body politic and corporate are respectively entitled to do as last aforesaid: and plaintiff avers, that he the said plaintiff, by being such householder, inhabiting and residing within the borough and county of the town of Poole, and paying scot and lot there as last aforesaid, was a part or member of the said last-mentioned body politic and corporate, within the intent and meaning of the said several words or terms of *burgenfes* or *burgesses*, and *communitas* or commonalty, so respectively mentioned and made use of in the several acts of parliament, grants, and charters, which from time to time have been made and granted to the said last-mentioned body politic and corporate in manner as aforesaid, and therefore entitled to turn in and depasture his commonable cattle upon the said last-mentioned waste or common called Canford Heath, and to cut and carry away furze and heath off and from said waste or common, in manner and form as all and every the members of the said last-mentioned body politic and corporate are respectively entitled to do as last aforesaid; by reason whereof, and according to the last-mentioned undertaking of defendant, he said defendant became liable to pay to plaintiff the said last-mentioned sum of ten pounds ten shillings, to wit, at T. aforesaid, in the said county of Devon, whereof defendant afterwards, to wit, on same day and year last aforesaid, there had notice. (Common conclusion in assumpsit.) Damages twenty pounds.

Feigned issue to
try whether the
rights of certain
persons claiming
common were
extinguished.

YORKSHIRE, to wit. W. H. and H. C. being respectively owners of certain messuages, lands, and tenements situate and being in the hamlet or district of, &c. in the parish of, &c. in the said county of York, complain of W. T. esq. J. G. clerk, J. G. and G. W. being respectively persons claiming right of common in the moors or waste grounds directed to be divided and inclosed by virtue of a certain act of parliament made and passed in the twenty-seventh year of the reign of our sovereign lord the present king, entitled, "An act for dividing and enclosing certain moors, commons, or waste grounds in the parish of, &c. in the county of York, being in the custody of, &c." for that whereas on, &c. at, &c. in, &c. a certain discourse was moved and had by and between the said plaintiffs and the said defendants, of and concerning a certain common or parcel of waste ground called, &c. within the said parish of, &c. in the said act also mentioned, and the rights of common thereon which

which the said W. H. was intitled for and in respect of his said messuages, lands, and tenements; and also of and concerning the proportion of the same moor, common, or parcel of waste ground which ought to be allotted to the said W. H. for and in respect of his aforesaid messuages, lands, and tenements; and upon that discourse a certain question then and there arose and was debated between the said plaintiffs and the said defendants, whether the respective commons of pasture and turbary which the said W. H. was entitled to upon the said last-mentioned moor, common, or parcel of waste ground, for and in respect of his said messuages, lands, and tenements, or any of them, ought to be apportioned, by reason that certain moor, commons, or waste grounds called, &c. had theretofore been divided and inclosed under and by virtue of a certain act of parliament, made and passed in the twentieth year of our said lord the king, intituled, "An act for dividing and inclosing certain moor, commons, or waste grounds in the manor or township of, &c. in the West Riding of the county of York," and that a certain allotment had been made of a certain part of the said last-mentioned moor, commons, or waste grounds to the then owners of the said messuages, lands, and tenements, now of the said W. H.; whereby, and by virtue of the said last-mentioned act, the rights of common upon the said last-mentioned moors, commons, or waste grounds which at the time of the passing of the said last-mentioned act, were appurtenant to the respective messuages, lands, and tenements of the said W. H. were extinguished and destroyed; and whether the said W. H. was intitled to no more than a proportionable allotment in the said moor, common, or waste ground called, &c. having regard and according to such allotment as aforesaid; and the said plaintiffs then and there asserted and affirmed, that the respective commons of pasture and turbary, which the said W. H. was intitled to upon the said last-mentioned moor, common, or parcel of waste ground for and in respect of the said messuages, lands, and tenements, ought not to be apportioned, by reason of the said moors, commons, or waste grounds called, &c. had theretofore been divided and inclosed under and by virtue of the said act of parliament made and passed in the twentieth year of the reign of our said lord the now king; and that the said allotment had been made of certain parts of the said last-mentioned moors and commons, or waste grounds, to the then owners of the said messuages, lands, and tenements now of the said W. H., whereby and by virtue of the said last-mentioned act, the rights of common upon the said last-mentioned moors, commons, or waste grounds, which at the time of the passing of the said last-mentioned act were appurtenant to the respective messuages, lands, and tenements of the said W. H. were extinguished and destroyed; and the said W. H. was intitled to an allotment in the said moor, common, or parcel of waste ground called, &c. without having regard to such apportionment as aforesaid: which said assertion and affirmation of the said plaintiffs they the said defendants wholly contradicted and denied; and thereupon afterwards,

ASSUMPSIT GENERAL.—ON FEIGNED ISSUES.

to wit, on, &c. at, &c. in, &c. in consideration that the said plaintiffs, at the special instance and request of the said defendants, had then and there paid to the said defendants the sum of five pounds of lawful money of Great Britain, they the said defendants undertook, and then and there faithfully promised the said plaintiffs that they the said defendants would pay to the said plaintiffs the sum of ten pounds in case the respective commons of pasture and turbary, which the said W. H. was entitled to upon the said last-mentioned moor, common, or parcel of waste ground for and in respect of his said messuages, lands, and tenements, or any of them, ought not to be apportioned, by reason that the said moors, commons, or waste grounds called, &c. had theretofore been divided and inclosed under and by virtue of the said act of parliament made and passed in the twentieth year of, &c.; and that the said allotment had been made of a certain part of the said last-mentioned moors, commons, or waste grounds to the then owners of the said messuages, lands, and tenements, now of the said W. H. whereby and by virtue of the said last-mentioned act the rights of common upon the said last-mentioned moors, commons, or waste grounds, which at the time of the passing of the said act were appurtenant to the said respective messuages, lands, and tenements of the said W. H. were extinguished and destroyed; and that the said W. H. was intitled to an allotment in the said moor, common, or parcel of waste ground called, &c. without having regard to such apportionment as aforesaid. And the said plaintiffs in fact, say, that the said respective commons of pasture and turbary, which the said W. H. was intitled to upon the said last-mentioned moor, common, or parcel of waste ground for and in respect of his said messuages, lands, and tenements ought not to be apportioned, by reason that the said moors, commons, or waste grounds called, &c. had theretofore been divided and inclosed under and by virtue of the said act of parliament made and passed in the twentieth year of, &c.; and that the said allotment had been made of a certain part of the said last-mentioned moors, &c. to, &c. of the said messuages, &c. now of the said W. H. whereby and by virtue of the said last-mentioned act, the rights of common upon the said last-mentioned moors, commons, or waste grounds, which at the time of the passing of the said last-mentioned act were apportioned to the respective messuages, lands, and tenements of the said W. H. were extinguished and destroyed; and that the said W. H. was intitled to an allotment in the said moor, common, or waste ground, called, &c. without having regard to such apportionment as aforesaid; whereof the said defendants afterwards, to wit, on, &c. at, &c. had notice, and by reason of the said last-mentioned premises then and there became liable to pay, and ought to have paid the said plaintiffs the sum of ten pounds, to wit, at, &c. And whereas, &c. [Second Count same as the first, except only putting plaintiff A. C. in the room of W. H. and common conclusion.] A CHAMBERL.

And

And the said defendants by A. B. their attorney, come and defend the wrong and injury when, &c. and say *assio non*; because as to the first-mentioned promise and undertaking they say, that true it is that such discourse was had and moved, and such question arose and was debated by and between said plaintiffs and the said defendants as in the first Count of the said declaration is for that purpose mentioned; and that they the said defendants did undertake and promise in manner and form as the said plaintiffs have in the said first Count of the said declaration above thereof complained against them; but the said defendants further say, that the respective commons of turbarry and pasture, which the said W. H. was entitled to upon the said moor, common, or parcel of waste ground called, &c. for and in respect of the said messuages, lands, and tenements ought to be apportioned, by reason that the said moors, commons, or waste grounds called, &c. had theretofore been divided and enclosed under and by virtue of the said act of parliament, made and passed in the twentieth year of, &c.; and that the said allotment had been made of a certain part of the said last-mentioned moors, commons, or waste grounds to the then owners of the said messuages, lands, and tenements, now of the said W. H. whereby and by virtue of the said last-mentioned act, the right of common upon the said last-mentioned moors, commons or waste grounds, which at the time of the passing of the said last-mentioned act were appurtenant to the said respective messuages, lands, and tenements of the said W. H. were extinguished and destroyed; and that the said W. H. was not entitled to an allotment in the said moor, common, or parcel of ground called, &c. without having regard to such apportionment as aforesaid, as the said plaintiffs have above alledged, and of this they put themselves upon the country, &c. [Second plea to second Count, same, making it agreeable to second Count.]

E. LAW.

1780. The Court of King's Palace at Westminster.

ROBERT B. by R. K. his attorney, complains against Richard B. of a plea of trespass on the case, for that whereas, on the first day of July, A.D. 1779, at Southwark, in the county of S. and within the jurisdiction of this court, a certain discourse was moved and had by and between said plaintiff and said defendant, of and concerning a certain cause or suit then depending in the said court of our lord the king of his palace of Westminster aforesaid, between the said Robert B. plaintiff and one H. M. defendant, in a certain plea of trespass on the case, to the damage of the said Robert B. of ninety-nine shillings, and upon that discourse a question then and there arose, and was debated, between the said plaintiff and the said defendant, whether the said defendant had ever become bail for the said H. M. in the said plea or suit or not; and the said plaintiff then and there asserted and affirmed, that the said defendant had become bail for the said H. in the said plea or suit, which said assertion and affirmation of the said

An entry of a feigned issue in the Palace Court, to try whether the defendant had ever become bail for one H. M. in another action; with the postea thereon.

plaintiff the said defendant then and there wholly denied, and asserted to the contrary thereof; and thereupon afterwards, to wit, on the same day and year aforesaid, at S. aforesaid, in the county and jurisdiction aforesaid, in consideration that the said plaintiff, at the special instance and request of the said defendant, had then and there paid to the said defendant the sum of five pounds of lawful, &c. he the said defendant undertook, and to the said plaintiff then and there faithfully promised, to pay to him the said plaintiff the said sum of ten pounds of like lawful money, in case he the said defendant had ever become bail for the said H. M. in the said plea or suit: and the said plaintiff in fact saith, that the said defendant, before the making of the promise and undertaking aforesaid, to wit, on the 14th of August, A. D. 1778, had become bail in the said palace court for the said H. M. to wit, in the palace court then held at S. aforesaid, in the county and jurisdiction aforesaid, whereof the said defendant afterwards, to wit, on the first day of July, A. D. 1779, at, &c. aforesaid, in, &c. aforesaid, had notice; by reason whereof the said defendant became liable to pay, and ought to have paid, to the said plaintiff the said sum of ten pounds, whereof the said defendant then and there had notice: Yet the said defendant, not regarding, &c. but contriving, &c. to deceive, &c. the said plaintiff, hath not as yet paid the said sum of ten pounds, or any part thereof, to the said plaintiff, (although so to do, &c.) but he so to do hath hitherto wholly refused, and still doth refuse, to the damage of the said plaintiff of twenty pounds, for which he brings his suit, &c.; and doth also aver that, &c.

See:

And the said defendant, by Richard H. his attorney, comes and defends the wrong and injury when, &c. and says, that true it is that such discourse was had and moved by and between the said plaintiff and the said defendant, as the said plaintiff hath above alledged, and that the said defendant did promise and undertake in manner and form as the said plaintiff hath above in and by his said declaration alledged against him; but the said defendant further saith, that the said plaintiff *actio non*; because he saith, that he the said defendant had not, at any time before the making of the said promise and undertaking of the said defendant, become bail for the said H. M. in the said plea or suit, as by the said declaration is above alledged; and of this he puts himself upon his coun-

Venire facias in
Palace Court.

try, and the said plaintiff doth the like. It is therefore commanded by the said court, to the bearers of the virges of the king's household, the officers and ministers of the said court, and to every of them, that they, or one of them, do cause to come before the judges of the said court, at the court of the king's palace of Westminster, on Friday the fourteenth day of April next following to be held here, to wit, at S. aforesaid, in the said county of S. within the jurisdiction aforesaid, twelve free and lawful men of the neighbourhood of S. aforesaid, in the said county of S. within the jurisdiction of the court aforesaid, by whom the truth of the matter may be the better known, and who are in no wise of kin
either

either to the said plaintiff or the said defendant, to make a certain jury between the said plaintiff and the said defendant, between whom the contention thereupon is, and who have put themselves upon the said jury: the same day is given by the said court to the parties aforesaid here, &c. At which day, to wit, at the court of the king's palace of Westminster lastly above mentioned, holden before the judges of the court here, to wit, at Southwark aforesaid, in the said county of S. within the said jurisdiction of the said court, on Friday the said fourteenth day of April, in the twentieth year of the reign of our lord the now king, comes as well the said plaintiff as the said defendant, by their aforesaid attorneys; and the jurors of the jury before mentioned, to wit, W. R. [&c. set out the names of the jury from the panel] being called, likewise came; who being chosen, tried, and sworn to speak the truth concerning the premises, say upon their oath, that the said defendant had not, at any time before the making of the promise and undertaking of the said defendant, become bail for the said H. M. in the said plea or suit mentioned in the said declaration of the said plaintiff, as by the said declaration is above alleged.

Posita in a feigned issue in the Palace Court,

There is no judgment entered upon a feigned issue. The only entry that is necessary, or indeed that can take place, is that of the verdict, which I have drawn

upon the production of the record which the court proceed on in the original action.

V. LAWES.

MIDDLESEX, *vs.* W. W. late of Charlotte-street, Bloomsbury, in the county of M. esquire, was attached to answer J. G. and R. J. of a plea of trespass on the case; and whereupon the said plaintiffs, by A. B. their attorney, complain, that whereas, on the seventh day of February, A. D. 1794, at Westminster, in the said county of M. a certain discourse was had and moved between the said plaintiff and the said defendant, of and concerning the promissory notes and warrants of attorney following, that is to say, one promissory note, bearing date the twenty-ninth day of August, A. D. 1785, made and drawn by one Thomas Wood, for the payment of the sum of forty-six pounds by the said Thomas Wood to the said defendant, or his order, two months after the date thereof, and indorsed with the name of the said defendant, one other promissory note, [&c. setting out forty-eight notes, as before] and also a certain warrant of attorney, bearing date the twenty-ninth day of August in the year aforesaid, and signed and sealed by the said defendants, authorizing and empowering certain attorneys therein named to suffer judgment to be signed against the said defendant for the sum of one thousand six hundred pounds in the court of our said lord the king of the bench at Westminster, as therein mentioned, in order to secure the payment by the said defendant to the said Griffin (one of the plaintiffs) of the said several sums of money in the said notes contained; which said notes so

Feigned issue to try whether any and what consideration had been paid for certain promissory notes and a warrant of attorney.

indorsed as aforesaid, and which said warrant of attorney, on the twenty-ninth day of August 1785, at Westminster aforesaid, were delivered by the said defendant to the said Robert (one of the said plaintiffs); and upon that discourse it was then and there, to wit, on the said twenty-ninth day of August, A. D. 1785 aforesaid, at, &c. aforesaid, debated between the said plaintiffs and the said defendants, "whether any and what consideration was ever and "when paid to the said defendant, by any and what person or "persons, for the said promissory notes and warrant of attorney, "and either and which of them;" and thereupon the said plaintiff then and there asserted and affirmed, that the sum of two hundred and forty pounds was, after the delivery of the said notes and warrant of attorney, paid by the said Robert to the said defendant, as a consideration for the said promissory notes and warrant of attorney; which said assertion of the said plaintiffs he the said defendant then and there wholly denied, and he the said defendant then and there likewise denied that any consideration whatsoever was ever paid to the said defendant by any person or persons for the said promissory note and warrant of attorney, or any or either of them: and thereupon afterwards, to wit, on the said twenty-ninth of August, in the year aforesaid, at, &c. aforesaid, in consideration that the said plaintiffs, at the special instance and request of the said defendant, had then and there paid to the said defendant the sum of five pounds of lawful, &c. the said defendant undertook, &c. to pay the sum of twelve pence for every twenty shillings of the said sum of two hundred and forty pounds, that was on or after the said delivery of the said promissory notes and warrant of attorney, or any or either of them, or at any other time whatsoever, paid to the said defendant by the said plaintiffs, or either of them, or any other person or persons, as a consideration for the said promissory notes and warrant of attorney, or any or either of them; and the said plaintiffs in fact say, that the said sum of two hundred and forty pounds, and every part thereof, was, after the said delivery of the said promissory notes and warrant of attorney, to wit, on the twenty-ninth of August in the year aforesaid, at, &c. aforesaid, paid to the said defendant by the said Robert, as a consideration for the said promissory notes and warrant of attorney; and by reason of the premises he the said defendant then and there became liable to pay, and ought to have paid, to the said plaintiff the sum of twelve pounds, being the sum of twelve pence for every twenty shillings of the said sum of two hundred and forty pounds, according to his said promise and undertaking so made as aforesaid: Yet the said defendant, not regarding, &c. but contriving, &c. hath not paid, &c. the said sum of twelve pounds, or any part thereof, (although, &c.) Damages, &c. suit, &c.

Plea thereto.

And the said defendant, by C. D. his attorney, comes and defends the wrong and injury when, &c. and says, that the said plaintiff *allego non*; because he says, that true it is that such discourse was had and moved, and it was debated by and between the said

said plaintiff and the said defendant as in the said declaration is for that purpose mentioned, and that he the said defendant did undertake and promise in manner and form as the said plaintiffs have above thereof complained against him; but the said defendant further saith, that neither the said sum of two hundred and forty pounds, or any part thereof, was on or after the delivery of the said promissory notes and warrant of attorney, or either of them, or at any time whatsoever, paid to the said defendant by the said plaintiffs, or either of them, or any other person or persons, as a consideration for the said promissory notes and warrant of attorney, or any or either of them; and of this he puts himself upon the country, and the said plaintiff doth the like, &c.; therefore, &c.

S. HOLROYD.

(a) MIDDLESEX, ff. J. S. late of Westminster, in the county of Middlesex, yeoman, was attached to answer unto T. S. M. S. E. S. and E. B. in a plea of trespass on the case, &c. and thereupon the said plaintiffs, by A. B. their attorney, complain, that whereas on the first day of January, A. D. 1770, to wit, at Westminster, in the county of Middlesex aforesaid, a certain discourse was had and moved by and between the said plaintiffs of the one part, and said J. S. *the said defendant in this suit*, of the other part, of and concerning divers freehold estates, to wit, an undivided moiety of divers freehold messuages, lands, and tenements, situate and being in the several counties of Middlesex and Hertford, and of and concerning a certain leasehold estate, to wit, an undivided moiety of a leasehold estate, situate in the parish of, &c. in the said county of, &c. late the estates of one J. S. deceased, and of which said freehold estates the said J. S. deceased, on, &c. (the date of the will) was seised in his demesne as of fee, and afterwards died seised thereof, and of which said leasehold estates the said J. S. deceased, on the day and year last mentioned, was possessed, and afterwards died so possessed thereof; and also of and concerning a certain paper writing, bearing date, &c. (the date of the will) purporting in itself to be the last will and testament of the said J. S. deceased, and whether the said J. S. deceased did by the said will devise the said freehold and leasehold estates or not; and upon that discourse the plaintiffs then and there asserted and affirmed, that the said J. S. deceased did, by the said paper writing, dated the said, &c. devise the said freehold and leasehold estates; which said assertion and affirmation of the said plaintiffs he the said defendant then and there wholly denied, and then and there alledged the contrary thereof; and thereupon afterwards, to wit, on the said first day of January, in the year 1770 aforesaid, at, &c. aforesaid, the said plaintiffs, at the special instance and request of the said defendant, undertook, and then and there faithfully promised the said defendant, to pay to him the sum of five pounds, in case the said J. S. deceased did not by the said paper writing, dated, &c. devise the said freehold and leasehold estates; and in consideration

A feigned issue out of chancery, viz. devisavit vel non, (in C. B.) of freehold and leasehold estates,

thereof the said defendant then and there undertook, and faithfully promised the said plaintiffs, to pay them the sum of ten pounds in case the said J. S. deceased did, by the said paper writing, dated, &c. devise the said freehold and leasehold estates: and the said plaintiffs aver, that the said J. S. deceased did, by the said paper writing, dated, &c. devise the said freehold and leasehold estates, to wit, at Westminster aforesaid, whereof the said defendant afterwards, to wit, on the said first of January 1770, at, &c. aforesaid, had notice; by means whereof the said defendant, according to the tenor of his promise and undertaking aforesaid, became liable to pay, and ought to have paid, to the said plaintiffs the said sum of ten pounds, to wit, at, &c. aforesaid: Yet the said defendant, not regarding his said promise and undertaking so by him made in this behalf as aforesaid, but contriving, &c. to deceive, &c. the said plaintiffs in this behalf, hath not as yet paid the said sum of ten pounds, or any part thereof, to the said plaintiffs, or to either of them, (although to do this the said defendant was requested by them the said plaintiffs afterwards, to wit, on the said first of January 1770 aforesaid, and often afterwards, to wit, at, &c. aforesaid,) but he to pay the same, or any part thereof, to the said plaintiffs, or to any or either of them, hath hitherto wholly refused, and still refuses to pay the same, or any part thereof, to the said plaintiffs, or to any or either of them; wherefore the said plaintiffs say, that they are injured and have sustained damage to the value of twenty pounds, and therefore they bring their suit, &c.

(a) In the common pleas they have no memorandum to the issue, unless in special cases, such as privilege.

Plea thereto.

And the said defendant, by C. D. his attorney, comes and defends the wrong and injury when, &c. and saith, that true it is that such a discourse was had and moved by and between the said plaintiffs of the one part, and the said defendant of the other part, in manner and form as the said plaintiffs have above alledged, and that said J. S. deceased was, on, &c. (the date of the will) seised in his demesne as of fee of and in the said freehold estates, and that he afterwards died seised thereof, and that the said J. S. deceased was, on the said, &c. possessed of the said leasehold estates, and that he afterwards died so possessed thereof, in manner and form as the said plaintiffs have above alledged, and that he the said defendant did undertake and promise in manner and form as the said plaintiffs have above alledged; but the said defendant says, that the said plaintiffs ought not to have or maintain their aforesaid action against him, because he saith, that the said J. S. deceased did not by the said paper writing, dated, &c. devise the said freehold and leasehold estates in manner and form as the said plaintiffs have above in that behalf alledged; and of this he puts himself upon the country, and the said plaintiffs do the like: therefore the sheriff is commanded that he cause to come here, in three weeks of the Holy Trinity, twelve, &c. by whom, &c. and who
neither,

Venue.

neither, &c. to recognize, &c. because as well, &c. ; the same day is given to the said parties there, &c.

LONDON, to wit. Be it remembered, &c. M. B. and H. F. debtors to our sovereign lord the now king, come before the barons of the exchequer, on Monday the twenty-third of January in this same Term, by A. B. their attorney, and complain by bill against J. E. J. T. C. and L. F. present here in court, of the same day, of a plea of trespass on the case, &c. ; for that whereas, on the first of January, A. D. 1775, at L. to wit, &c. a certain discourse was had and moved by and between the said plaintiffs of the one part, and the said defendants of the other part, of and concerning the said defendants having wrongfully taken and held possession of a certain messuage or dwelling-house, with the appurtenances, in Lombard-street, in the city of L. which had, before the committing of that grievance, been assigned to the said plaintiffs for the residue of a certain term of years then and yet to come and unexpired, and of and concerning the damage and injury which the said plaintiffs had sustained by the said defendants so wrongfully taking and holding possession thereof, and what the same amounted unto ; and upon that discourse a certain question then and there arose between the said plaintiffs and the said defendants, how much the said plaintiffs had been damnified or injured by the said defendants taking and holding possession of the said house and premises ; and on that discourse the said plaintiffs then and there, to wit, on the said first of January in the said year 1775 aforesaid, asserted and affirmed that their damages by them sustained in that behalf, amounted in the whole to a large sum of money, to wit, the sum of three hundred pounds : which said assertion and affirmation of the said plaintiffs they the said defendants then and there wholly denied, and on the contrary asserted and affirmed that such damages did not amount to more than forty pounds : whereupon the said plaintiffs then and there, at the special instance and request of the said defendants, paid to the said defendants the sum of ten pounds, in consideration whereof the said defendants undertook, and faithfully promised the said plaintiffs to pay them twenty pounds in case the damages sustained by the said plaintiffs, by the said defendants wrongfully taking and holding possession of the house, did amount to the said sum of three hundred pounds, or to more than forty pounds ; and the said plaintiffs aver, that the damages by them sustained, on account of the said defendants wrongfully taking and holding possession of the said house, did amount to a large sum, and more than the sum of forty pounds, and by reason of the premises, the said defendants, according to their promise and undertaking aforesaid, became liable to pay, and ought to have paid to the said plaintiffs, the sum of twenty pounds, to wit, at L. &c. aforesaid, whereof the said defendants then and there had notice : Yet the said defendants, not regarding, &c. but contriving, &c. have not, nor hath either

A feigned issue (in the exchequer of pleas), viz. damnificatus vel non preter, so much by defendant's taking and holding a wrongful possession of plaintiff's house.

of

of them, yet paid the said sum of twenty pounds, or any part thereof, to the said plaintiffs, or either of them, (although, &c.) but they so to do have, and each of them hath, hitherto wholly refused, and still do, and each of them doth, refuse so to do, to the said plaintiffs their damage of forty pounds, whereby they are less able to satisfy to our said lord the now king the debts which they owe to his majesty's exchequer; and therefore they bring their suit, &c.

*Pls pendamus
scilicet prout
qel.*

And the said defendants, by C. D. their attorney, come and defend the wrong and injury when, &c. and say, that true it is that such discourse was had and moved by and between the said plaintiffs and the said defendants, as the said plaintiffs have above alledged, and that upon such discourse such questions did arise between them as the said plaintiffs have alledged, and that the said defendants did promise and undertake in manner and form as the said plaintiffs have above alledged; yet the said defendants say, that the said plaintiffs ought not to have their aforesaid action thereof maintained against them, because they say that the damage sustained by the said plaintiffs by reason of the said defendants so wrongfully taking and holding possession of the said house, does not in the whole amount to more than the sum of forty pounds, as they have above alledged; and of this they put themselves upon the country; and the said plaintiffs do the like, &c.; therefore, &c.

*Feigned issue on
a commission of
bankrupt to try
whether defen-
dant owed the
plaintiffs one
hundred pounds
at the time of
issuing the com-
mission.*

MIDDLESEX, *ff.* Be it remembered, that on Monday next after the morrow of All Souls, in this same Term, before our lord the king, at Westminster, come Henry Tipping and Thomas Prickett, by B. W. their attorney, and bring into the court of our said lord the king now here, their certain bill against Robert Snelgrove, being, &c. in a plea of trespass on the case, &c. and there are pledges for the prosecution of the said bill, to wit, John Doe and Richard Roe, which said bill followeth in these words, to wit: Middlesex *ff.* Henry Tipping and Thomas P. complain of R. S. being, &c. in a plea, &c. for that whereas, before the making of the promise and undertaking of the said Robert hereafter mentioned, a commission of bankrupt was duly awarded and issued against the said Robert; and thereupon afterwards and before the making of the promise and undertaking of the said Robert hereafter mentioned, to wit, on the first of November A. D. 1782, to wit, at Westminster in the county of Middlesex aforesaid, a certain discourse was had and moved by and between the said Henry and Thomas and the said Robert of and concerning the said commission of bankrupt, and upon that discourse a question then and there arose, between the said Henry and Thomas and the said Robert, whether the said Robert was indebted to the said Henry and Thomas in the sum of one hundred pounds, at the time of the issuing of the aforesaid commission of bankrupt against the said Robert; and upon that discourse the said H. and T. then and there,

here, to wit, on the day and year afore said, at Westminster afore said, asserted and affirmed that the said Robert was indebted to the said H. and T. in the sum of one hundred pounds at the time of the issuing of the afore said commission of bankrupt against the said Robert; which assertion and affirmation of the said H. and T. the said Robert then and there wholly denied, and then and there asserted and affirmed the contrary thereof; and thereupon afterwards, on the day and year last afore said, at Westminster afore said, in consideration that the said H. and T. at the special instance and request of the said Robert, had then and there undertaken, and faithfully promised the said Robert to pay him the sum of ten pounds if the said Robert was not indebted to the said H. and T. in the sum of one hundred pounds at the time of the issuing of the afore said commission of bankrupt against the said Robert, he the said Robert then and there undertook, and faithfully promised the said H. and T. to pay them the sum of ten pounds, if he the said Robert was indebted to the said H. and T. in the sum of one hundred pounds at the time of the issuing of the afore said commission of bankrupt against the said Robert: and the said H. and T. in fact say, that the said R. was indebted to them the said H. and T. in the sum of one hundred pounds at the time of the issuing of the afore said commission of bankrupt against the said Robert; by reason whereof the said Robert, according to the tenor of his afore said promise and undertaking, afterwards, and before the exhibiting of the bill of the said H. and T. to wit, on the day and year last afore said, at Westminster afore said, became liable to pay to the said H. and T. the sum of ten pounds, whereof the said R. then and there had notice: Yet the said Robert, not regarding his afore said promise and undertaking, by him in manner and form afore said made, but contriving, &c. conclude.

And the said Robert, by A. B. his attorney, comes and defends Plea, the wrong and injury when, &c. and saith, that true it is that such course was had and moved by and between him and the said Henry and T. and that such question did then and there arise, as the said H. and T. have in their declaration alledged. and that he the said Robert did undertake and promise in manner and form as the said H. and T. have above thereof complained against him; but the said Robert saith, that the said H. and T. ought not to have their afore said action thereof maintained against him, because he saith that he the said Robert was not indebted to the said Henry and T. in the sum of one hundred pounds at the time of issuing of the afore said commission of bankrupt against him the said Robert; and of this he the said Robert puts himself up in the country, and the said H. and T. do the like, &c.; therefore let a jury come before our lord the king at Westminster on Tuesday next after fifteen days of Saint Martin, and who are neither, &c. to recognize, &c. because as well, &c.; the same day is given to the said parties here, &c.

V. LAWES,

LONDON,

ON FOREIGN JUDGMENTS.

*Declaration in
assumpsit gene-
ral in B. R. on
a judgment in a
foreign court in
an action of
assumpsit of
227l. 18s. 4d.
current money
for the debt, and
1584 3 5ths lb.
of tobacco for
the costs and
charges.
Second Count,
General indebi-
tatus for the
money only re-
covered.*

LONDON, to wit. George Vansant Mann, complains of David Reece being, &c. for that whereas the said plaintiff heretofore, to wit, on the thirteenth day of May, A. D. 1788, by the consideration and judgment of a certain court, called a General Court for the Western Shire of the State of Maryland, holden at the city of Annapolis, in America, in parts beyond the seas, on the said thirteenth day of May, in the said year of Our Lord 1788, recovered against the said defendant as well the sum of two hundred and twenty-seven pounds eighteen shillings and fourpence current money of the said State of Maryland, for his damages which he had sustained by reason of the non-performance of certain promises and assumptions before then made by the said defendant to the said plaintiff, as also to deliver one thousand five hundred and eighty-four pounds and three-fifths of a pound of tobacco, by the said court there unto the said plaintiff on his assent adjudged for his costs and charges by him about this suit in that behalf laid out and expended, whereof the said David is convicted; which said judgment still remains in that court unreversed, unpaid, and unsatisfied, that is to say, at L. in the parish of St. Mary-le-Bow, in the ward of Cheap; and the said plaintiff has not yet obtained execution of the said judgment: by reason of all which premises, the said defendant, after the rendering of the said judgment, to wit, on the said first day of June, in the said year of Our Lord 1788, became and was liable to pay the said sum of two hundred and twenty-seven pounds eighteen shillings and fourpence current money of the said State of Maryland, to the said plaintiff, and to deliver to the said plaintiff the said one thousand five hundred and eighty-four pounds and three-fifths of a pound of tobacco: and being so liable, he the said defendant, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, to wit, at L. aforesaid, in the parish and ward aforesaid, undertook, and to the said plaintiff then and there faithfully promised, to pay the said sum of two hundred and twenty-seven pounds eighteen shillings and fourpence current money of the said State of M. to the said plaintiff, and to deliver to the said plaintiff the said one thousand five hundred and eighty-four pounds and three-fifths of a pound of tobacco, when he the said defendant should be thereunto afterwards requested: Yet the said defendant, not regarding his said promise and undertaking so by him made as aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said plaintiff in this behalf, hath not (although often requested) yet paid the said sum of two hundred and twenty-seven pounds eighteen shillings and fourpence current money of the said State of M. or any part thereof, to the said plaintiff, or delivered to the said plaintiff the said one thousand five hundred and eighty-four pounds and three-fifths of a pound of tobacco, or any part thereof, but, on the contrary, he the said defendant hath hitherto wholly neglected and refused, and still doth neglect and refuse, so to do, or in any manner to satisfy the

the said plaintiff for the same, to wit, at L. aforesaid, in the parish and ward aforesaid. And the said plaintiff in fact saith, that at the time of the rendering of the said judgment, the said sum of two hundred and twenty-seven pounds eighteen shillings and fourpence, current money of the said State of Maryland, was and still is of great value, to wit, of the value of one hundred and thirty-six pounds fifteen shillings of lawful, &c. and that the said one thousand five hundred and eighty-four pounds and three-fifths of a pound of tobacco, so adjudged to the said plaintiff as aforesaid, then were and now are of great value, to wit, of the value of ten pounds of lawful, &c. to wit, at L. aforesaid, in the parish and ward aforesaid. And whereas also, the said plaintiff heretofore, to wit, on the thirteenth day of May, in the year of Our Lord 1788, by the consideration and judgment of a certain court, called a General Court for the Western Shire of the State of M. holden at the city of Annapolis, in America, in parts beyond the seas, on the said thirteenth day of May, in the said year of Our Lord 1788, recovered against the said defendant the said sum of two hundred and twenty-seven pounds eighteen shillings and fourpence, current money of the said State of M. for his damages which he had sustained by reason of the non-performance of certain promises and assumptions before then made by the said defendant to the said plaintiff, whereof the said defendant is convicted; which said last-mentioned judgment still remains in that court in full force, unreversed, unpaid, and unsatisfied, that is to say, at L. aforesaid, in the parish and ward aforesaid, and the said plaintiff hath not yet obtained execution of the said last-mentioned judgment: and the said plaintiff in fact says, that the said last-mentioned two hundred and twenty-seven pounds eighteen shillings and fourpence current money of the said State of M. at the time of recovering the said last-mentioned judgment, were and yet are of great value, to wit, of the value of one hundred and thirty-six pounds fifteen shillings of lawful, &c. to wit, at L. aforesaid, in the parish and ward aforesaid: by virtue of which said last-mentioned judgment, the said defendant, after the recovering thereof, to wit, on the first June, A. D. 1788, to wit, at L. aforesaid, in the parish and ward aforesaid, was indebted to the said plaintiff in the said sum of one hundred and thirty-six pounds fifteen shillings of lawful, &c. upon the said last-mentioned judgment; and being so indebted, he the said defendant, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at L. aforesaid, in the parish and ward aforesaid, undertook, and then and there faithfully promised the said plaintiff, to pay him the said last-mentioned sum of money, when he the said defendant should be thereto afterwards requested. (Counts for goods sold and delivered, money paid, lent, had, and received; account stated, and common conclusion. Pledges, &c.).

Averment of the value in sterling money of the tobacco and money recovered.

Second Count, General indebtedness *assumpsit* on judgment in the court of Maryland.

Vi. Walter against Witter, Dougl. 1 to 7. See plea to this declaration, post. Pleas in Assumpsit.

CORN-

Declaration in **CORNWALL**, to wit. J. C. complains of T. C. being, &c. *assumpsit* on a for that whereas the said T. C. on, &c. at, &c. was indebted to the judgment reco- said J. C. in thirty pounds of lawful, &c. by a certain decree or vered against order of the court of Stannaries in Cornwall, holden before A. B. defendant in the doctoꝝ of laws, vice-warden of the said Stannaries, to wit, at, &c. *Stannary Court of Cornwall.* ordered and decreed to be paid by the said T. C. to the said J. C. as well for twenty-three pounds due from the said T. C. to the said J. C. on an account stated, as for seven pounds to the said J. C. by the said court awarded for his costs of prosecuting his said petition in the said court; which said decree and order being in full force and effect, and unsatisfied, he the said T. C. in consideration thereof, afterwards, to wit, on, &c. at, &c. undertook, and then and there faithfully promised the said J. C. to pay him the said sum of money when he the said defendant should be thereunto afterwards requested: and whereas also the said T. C. afterwards, to wit, on, &c. at, &c. was indebted to the said J. C. in other thirty pounds of like lawful money, for so much money by a certain other decree or order of the said court of the Stannaries of Cornwall, holden before W. B. doctoꝝ of laws, vice-warden of the Stannaries, to wit, at, &c. ordered and decreed to be paid to the said J. C. by the said T. C. which said decree or order still is in full force and effect, and unsatisfied; and being so indebted, &c. (Add the money Counts and common conclusion.) F. BULLER.

Declaration in **MIDDLESEX**, *ss.* For that whereas heretofore, to wit, on the second day of June, A. D. 1772, in a certain court of our lord the now king, called a Court of Vice-admiralty, holden at Pensacola, in the province of West Florida, in North America, in and for the said province (to wit, at Westminster, in the county of Middlesex aforesaid), before the honourable Alexander Macpherson, esquire, then judge-surrogate and commissary-deputy of the court aforesaid, it was published, promulgated, pronounced, and decreed by the said judge, in a certain cause civil and maritime, then lately depending in the said court between the said plaintiff and the said defendants, that said defendants, the defendants in that cause, should pay to said plaintiff, the libellant in that cause, the sum of one hundred and one pounds nine shillings and eightpence farthing, of lawful, &c. (being the first cost of a certain trunk of goods, wares, and merchandizes of the said plaintiff, theretofore shipped on board a certain brigantine or vessel called the Africa, whereof said S. (*one of defendants*) then was master, and the said P. (*the other defendant*) one of the part-owners (to be delivered to the said plaintiff at the port of S. in the province of West Florida, he paying freight for the same, and which, on the arrival of said brigantine at the port aforesaid, could not be found on board said brigantine, but was wholly lost), and also the sum of thirty-five pounds per centum upon said sum of one hundred and one pounds nine shillings and eightpence farthing, the said plaintiff first paying freight for the said trunk; and also that said defendants should pay the sum of eighty-nine pounds three shillings of like lawful, &c. being the costs taxed in that cause, besides the charges of the monition and other expences that might ensue to be paid

paid within fifteen days after the service of said monition, but that such monition should not be extracted within a week from the day and year last aforesaid, to wit, at Westminster aforesaid. *And* *whereas* said defendants, after the promulgation of said decree, to wit, on the thirteenth June, A. D. 1772, at Westminster aforesaid, appealed from the said decree to our lord the now king's most excellent majesty in council, to wit, at Westminster aforesaid, and such proceedings were had on said appeal, that afterwards, to wit, at the court of our said lord the now king, holden at his palace at St. James's, to wit, at Westminster aforesaid, before our said lord the now king, and divers peers and great men, and other liege subjects of our said lord the king, and of his most honourable privy council, on the thirty-first September, A. D. 1773, our said lord the king, by and with the advice of his privy council, ordered, that the said appeal should be dismissed for non-prosecution, with twenty pounds sterling costs, to wit, at Westminster aforesaid; whereof said defendants afterwards, to wit, on the day and year last aforesaid, at Westminster aforesaid, had notice. *And whereas* said plaintiff also laid out and expended a large sum of money, to wit, the sum of pounds of like lawful, &c. in and about the charges of the monition and other expences in suing, and on account of the said cause, besides the sum of eighty-nine pounds three shillings for taxed costs, as aforesaid, which, together with the said sum of one hundred and one pounds nine shillings and eightpence farthing, of lawful, &c. (being the first cost of the said trunk of goods (allowing the said defendants the sum of for the freight thereof), and the said sum of twenty-five pounds per cent. upon the said sum of one hundred and one pounds nine shillings and eightpence farthing, and the said sum of eighty-nine pounds three shillings (being the costs taxed as aforesaid), and the said sum of twenty pounds (by our said lord the now king, by and with the advice of his privy council, as aforesaid, ordered for costs) made and amounted to a large sum of money, to wit, the sum of pounds of like lawful, &c. to wit, at Westminster aforesaid; and the said decree is still in full force and unsatisfied; of which said several premises the said defendants afterwards, to wit, on first January 1774, to wit, at Westminster, had notice; *and by means* of which said several premises, they the said defendants became liable to pay to said plaintiff said sum of pounds, when they should be thereunto afterwards requested; and being so liable, the said defendants, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at Westminster aforesaid, undertook, and faithfully promised said plaintiff, to pay him said last-mentioned sum of money, when they should be thereunto afterwards requested. *And whereas*, &c. &c. (A Second Count, that defendants were indebted, &c. by a certain decree, &c. promulgated, &c. following the substance of this Count, and also in the further sum of pounds for charges of monition, &c. as above, making together in the whole the sum of, &c.; and being so indebted, &c. Third Count, only stating the decree generally. Common conclusion to the above three Counts. Fourth and fifth, Special assumpsit to convey a certain trunk.

Appeal to the king in council, and

appeal dismissed, with 20l. costs.

Plaintiff laid out other costs, &c. which, together with other sums, amount to £,

Decree still in force.

Defendants had notice; by means, &c. became liable; and being so, in consideration thereof, promised, &c.

Second Count.

Sixth,

Sixth and seventh, Goods bargained and sold, and sold and delivered. Eighth, Money laid out, &c. Ninth, Money lent, &c. Common conclusion to four last Counts.) C. RUNNINGTON.

ON LEGACIES.

Indebitatus assumpsit for a legacy.

MIDDLESEX, *ss.* William Laslett the elder, late of, &c. and Thomas Laslett late of the same place, were attached to answer unto William Laslett the younger, in a plea of trespass on the case, &c. and thereupon the said plaintiff, by William Johnston his attorney, complains, that whereas one William Laslett, deceased, in his lifetime, to wit, on the fifth day of April A. D. 1775, to wit, at Westminster aforesaid, in the said county of Middlesex, duly made his last will and testament in writing, bearing date the day and year aforesaid, and thereby, amongst other things, gave and bequeathed unto the said plaintiff (by the description of his grandson W. Laslett, son of Stephen Laslett) twenty pounds of lawful, &c. to be paid him by his executors as soon as he the said plaintiff should attain his age of twenty-four years; and the said William Laslett deceased did in and by his said last will and testament nominate, constitute, and appoint his sons the aforesaid defendants executors of the same; and after the making thereof, to wit, on the first day of April A. D. 1777, died, without altering or revoking his said will, to wit, at Westminster aforesaid, in the county aforesaid: and the said plaintiff in fact saith, that upon the death of the said William Laslett deceased, the said defendants took upon themselves the burthen of the execution of his aforesaid will, and afterwards, to wit, on the fourth day of April in the year 1777 aforesaid, duly proved the same, and assented to the aforesaid bequest to the said plaintiff, to wit, at Westminster aforesaid, in the county aforesaid: and the said plaintiff further saith, that before the exhibiting the bill of him the said plaintiff, to wit, on the first day of January A. D. 1782, he the said plaintiff attained his age of twenty-four years, whereof he the said defendant, on the same day and year, had notice, to wit, at Westminster aforesaid, in the county aforesaid: and the said plaintiff in fact further saith, that afterwards, to wit, on the day and year last aforesaid, at Westminster aforesaid, in the county aforesaid, the said defendants had goods and chattels which were of the said William Laslett deceased in their hands, to be administered, to a large amount, to wit, to an amount sufficient to pay and satisfy, and with which they could and might have paid and satisfied, the said sum of twenty pounds so given and bequeathed to the said plaintiff as aforesaid, over and besides the debts and funeral charges of the said William Laslett deceased, whereby the said defendants became liable to pay to the said plaintiff

that the sum of twenty pounds so given and bequeathed to him as aforesaid: and being so liable, they the said defendants, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at Westminster aforesaid, in the county aforesaid, undertook, and faithfully promised the said plaintiff, to pay him the said sum of twenty pounds so given and bequeathed to him as aforesaid, when they should be thereto afterwards requested. Money had and received, and common conclusion. [See Conclusions, &c.]

The general opinion seems against this action; but from what fell from the Court in determining the late case of (*a*) *Hawkes and Saunder*, and upon principles of law, I should be inclined to think it maintainable, and that too against the defendants in their own right, supposing plaintiff can establish the amount of assets.

V. LAWES.

(*a*) Cowp. 289. But see Assumpsit for a Legacy, post.

SOMERSETSHIRE, *ff.* Nathaniel Atkins and Anne his wife complain of Charles Hill being, &c. for that whereas James Clarke, on the seventeenth day of November, A. D. 1780, at Taunton in the said county, by his last will and testament, in writing, did (amongst other things) give and bequeath to his daughter Anne (then and still being the wife of the said Nathaniel) the sum of sixty pounds, if she the said A. should be living at the time of his (the said James Clarke's) death, and of his last will and testament made the said C. H. his sole executor; and the said James C. afterwards, to wit, on the fourteenth day of September, in the year of Our Lord 1781, at T. aforesaid, died without altering or revoking his said will, and the said C. upon the death of the said James, took upon himself the burthen of the execution of the said will; and the said N. and A. further say, that divers goods and chattels of the said J. of great value, to wit, of the value of one hundred pounds, afterwards, to wit, on the same day and year last aforesaid, at T. aforesaid, came to the hands of the said C. as executor of the said James, which said goods and chattels were more than sufficient to pay and satisfy the just debts and legacies of the said J. to wit, at T. aforesaid, in the said county, of which the said C. then and there had notice; by reason of which said premises, the said C. became liable to pay to the said N. and A. the said sum of sixty pounds so devised by the said J. as aforesaid; and being so liable, he the said C. in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, at T. aforesaid, in the county aforesaid, undertook, &c. (as usual) to pay to them the said sum of sixty pounds, whenever he the said C. should be thereunto afterwards requested. (2d Count, for money had and received.) Nevertheless the said C. his said several promises and undertakings in manner and form aforesaid made in no wise regarding, but contriving, &c. to deceive, &c. hath not paid to the said N. and A. or either of them, the said sums of money, or any part thereof, (although to pay the same the said C. hath

Assumpsit for a Legacy.
See ante.

hath been by the said N. and A. often requested,) but to pay the same to the said A. and N. or either of them, he the said C. hath hitherto wholly refused, and still doth refuse, to the damage, &c. and therefore, &c.

Unless the plaintiff can prove something more than is stated in the instructions, the event of this action will be extremely doubtful. Indeed I never knew an *action* brought for a legacy yet, unless there was an *express* promise by the executor to pay it; and unless such promise can be proved, or it can be proved that the executor had sufficient assets to pay it, the action I think cannot be maintained.

F. BULLER.

A general demurrer to the foregoing declaration was argued 23d May in Easter Term 1779. The chief point made was on the form of the declaration, and on that alone it was decided in plaintiffs favour, for the declaration stated an *assumpsit* by the executor since the death of testator, (having assets at the same time,) therefore the *assumpsit* of the executor totally alters the nature of the case, and the jury alone must try the question, and that only, *whether the executor did undertake or not?* for if he did undertake, an action undoubtedly lies; but if, on the contrary, the jury find that he did not undertake, (a) *a verdict must be found for defendant*. Yet as the declaration is thus drawn, the Court cannot prevent the fact being tried by a jury; so instead of its being made a general question, whether a legacy is recoverable at law or not? the present demurrer goes to the substance of

the declaration; for as an *assumpsit* by the executor was laid in the declaration, it was not necessary to decide the general question; for in the manner plaintiffs declared, the action was no otherwise than an action on the case on the common *assumpsit*. But Lord M. said, That though it was not necessary, and consequently he would decline mentioning his opinion on the general question, whether a legacy is recoverable at common law or not? yet he looked on the court of K. B. in this respect as having a concurrent jurisdiction with the court of Chancery, and that if the court of K. B. could not compel an executor to pay a legacy, the court of Chancery, for the very same reasons, could not. But as an *assumpsit* is alleged in the declaration, as made by *assumpsit* subsequent to testator's death, there was no doubt but that plaintiffs would recover if they could prove such *assumpsit* and assets. See this case reported in Cowp. 284. with the present Mr. Justice Byler's (then Mr. Buller) able argument, and the judgment of the Court delivered very fully by Lord Mansfield: and see *Hawkes and others v. Saunders*, Cowp. 289. where Mr. Justice Buller delivered his own argument when a judge; and *Rose v. Bowl*, 1 T. Rep. C. B. 102. &c. But see *Deeks v. Strutt*, 5 Term Rep. 690. with Lord Kenyon's and Mr. Justice Grose's argument in giving judgment; so that at common law *assumpsit* will not lie for a legacy.

(a) Qu.

Declaration for a share of a legacy left on the death of testator's wife and survivor of one of the legatees, against one executor, the other having renounced.

(1) last.

LONDON, to wit. William Harrison late of, &c. was attached to answer unto Thomas H. in, &c. and thereupon the said plaintiff, by A. B. his attorney, complains, that whereas one E. K. deceased, in his lifetime, to wit, on, &c. at, &c. duly made and published his last will and testament in writing, bearing date the day and year (1) aforesaid, and thereby (amongst other things) gave and bequeathed unto the said defendants, and one H. W. in the said will named, the sum of one thousand pounds upon the special trust and confidence that they the said defendant and H. W. or the survivor of them, or the executors or administrators of such survivor, should and did, as soon as conveniently could be after his decease, put and place the said sum of one thousand pounds out at interest upon good and sufficient security, and for the most interest that

that could be legally gotten for the same, and the interest and produce arising therefrom, from time to time to pay to his dear wife E. K. for and during the term of her natural life, by two equal half-yearly payments in each year, the first payment to be made within six months next after his decease; and from and immediately after her decease, be the said testator gave and bequeathed the said sum of one thousand pounds to his nephews and nieces John Harrison the said defendant, M. W. the said plaintiff, S. the wife of J. S. E. H. T. H. S. H. E. H. C. H. L. H. and H. H. to be divided between them equally, share and share alike, as soon after his the said testator's wife's decease as might be; and in case any or either of his the said testator's nephews or nieces should happen to die in the lifetime of his said wife, then he gave the share of him, her, or them so dying unto the survivor of his said nephews and nieces in equal shares and proportions; also be the said testator gave and bequeathed by his said will, to his said nephews and nieces T. H. &c. the sum of one hundred pounds a piece, to be paid them respectively by his said executor therein after named, within six months next after his decease; and the said testator, in and by his said will, nominated and appointed the said defendant sole executor thereof; and after the making thereof, to wit, on, &c. died without altering or revoking his said will, and leaving the said E. K. and the said several other legatees named in his said will with him surviving, to wit, at, &c.: and the said plaintiff in fact saith, that upon the death of the said E. K. to wit, on, (2) &c. the said defendant took (2) lastly above mentioned. upon himself the execution of the said will of the said E. K. (3) and then and there assented to the several bequests so thereby made as aforesaid, and afterwards duly proved the same as such executor thereof as aforesaid, to wit, at, &c. And the said plaintiff in fact further says, that after the death of the said E. K. and in the lifetime of his said late wife, the said E. K. to wit, on, &c. the said L. H. and S. the wife of J. S. two of the legatees in the said will of the said E. K. named, died, and that afterwards, and before the suing out of the original writ of the said plaintiff against the said defendant, to wit, on, &c. E. K. the widow of the said E. K. died, to wit, on, &c. And the said plaintiff in fact further says, that six months from the death of the said E. K. (4) have long since elapsed, and that the share and interest of him the said plaintiff of and in the said sum of one thousand pounds so bequeathed in and by the said will of the said E. K. as aforesaid, and thereby directed to be divided upon the death of the said E. K. as aforesaid, amounted to a large sum of money, to wit, the sum of one hundred and twenty five pounds of lawful money of Great Britain; of all which said several premises, be the said defendant afterwards, to wit, on, &c. had notice. And the said plaintiff in fact further says, that the said H. W. in the said will of the said E. K. named, hath wholly renounced, and always hitherto declined, acting or being concerned in the said trust so by the said will reposed in him the said H. W. and the said defendant as to the aforesaid bequest or legacy of one thousand pounds, and hath not yet received

- the same, or any part thereof, or any money on account thereof. But the said plaintiff in fact further says, (5) that afterwards, and just before the suing forth the original writ of the said plaintiff against the said defendant, to wit, on, &c. the said defendant had received, and then and there had in his hands and possession, goods and chattels which were of the said E. K. deceased at the time of his death to be administered, to a large amount, to wit, to an amount sufficient to pay and satisfy, and with which he could and might have then and there paid and satisfied, the said several legacies herein before mentioned, and all other legacies (6) given and bequeathed (7) by the said will of the said E. K. and thereby directed to be paid over and besides the debts and funeral charges of the said E. K. whereby the said defendant then and there became liable to pay to the said plaintiff the said legacy of one hundred pounds, and also his said share of the said sum of one thousand pounds so (8) given and bequeathed to him the said plaintiff by the said will of the said E. K. as (9) aforesaid, amounting in the whole to a large sum of money, to wit, the sum of two hundred and twenty-five pounds of, &c.; and being so liable, he the said defendant, in consideration thereof, afterwards, to wit, on, &c. undertook, and faithfully promised the said plaintiff, to pay him the said last-mentioned sum of money, when he the said defendant should be thereto afterwards requested. And whereas, &c. &c. (same as the first, omitting the parts in italic, and inserting what is in the margin; common Counts, and account stated, and common conclusion.)*
- ad Count.
- V. LAWES.

Declaration against an executor for a legacy payable to plaintiff when he attained 21.

CHESHIRE, to wit. T. C. complains of P. C. executor of the last will and testament of P. C. deceased, being, &c. for that whereas one P. C. since deceased, in his lifetime, to wit, on the seventh of July 1776, at M. in the said county of C. made his last will and testament in writing, and did thereby (amongst other things) give and bequeath unto the said T. the sum of pounds, to be paid to him by his executors when he the said T. should attain the age of twenty-one years, and of his said last will and testament made the said P. C. executor as aforesaid; and the said P. C. the testator afterwards, to wit, on the same day and year aforesaid, at, &c. died without altering or revoking his said will; and the said P. C. the defendant, after the death of P. C. deceased, afterwards, to wit, on, &c. at, &c. duly proved the said will and took upon himself the burthen of the execution thereof. And the said T. further says, that divers goods and chattels of the said P. C. deceased, of great value, to wit, of the value of five thousand pounds and upwards, afterwards, to wit, on the same day and year aforesaid, at, &c. came to the hands of the said P. C. the defendant, executor of the last will and testament of the said P. C. deceased, which said goods and chattels were more than sufficient to satisfy and pay all the funeral expences, just debts and legacies

of

of the said P. C. deceased. And the said T. further says, that he the said Thomas afterwards, and before the exhibiting the bill of the said T. to wit, on the first of January 1787, attained the age of twenty-one years, to wit, at, &c. of all which said premises he the said P. C. the defendant, executor as aforesaid, then and there had notice; by reason whereof the said P. C. the defendant, executor as aforesaid, became liable to pay to the said T. the said sum of five pounds so bequeathed to him as aforesaid, by the said R. C. deceased as aforesaid; and being so liable he the said defendant, executor as aforesaid, in consideration thereof afterwards, to wit, on, &c. at, &c. Assumpsit to pay the said five pounds whenever afterwards he the said defendant should be thereto requested; Money paid, &c. lent, &c. had, &c. and breach to the whole.

Drawn by MR. GRAHAM,

Vide Atkins and Wife v. Hill, Cowp. 284, and Hawkes and Wife v. Saunders, Cowp. 289,

FOR TITHES.

AND whereas the said defendant afterwards, &c. was indebted to the said J. L. in his lifetime in (a) *other* ninety pounds, for the use and occupation of divers *other* tithes of corn, grass, and hay, and *other* great and small tithes of the said J. L. in his lifetime growing, arising, renewing, and springing on and coming off divers other lands and tenements, situate, lying, and being in the parish aforesaid, by the said defendant, and at his request, for a long time, to wit, for the space of one year before then elapsed, had, possessed, used, occupied, and enjoyed, by and under the said J. L. in his lifetime and by his permission; and being so indebted, &c. (b) And whereas, in consideration that the said J. L. in his lifetime, at the like special instance, &c. of the said defendant, had before that time permitted the said defendant to have, collect, take, and carry away to his own use, certain other great and small tithes arising, springing on, and coming off certain *other* lands and tenements, situate, lying, and being in the said parish of B. for the space of one year then elapsed, and that the said defendant had accordingly had, received, taken, and carried away to his own use the said last mentioned tithes, and which said last mentioned tithes were payable to the said J. L. in his lifetime, as one of the vicars of the said vicarage of B. &c. he the said defendant undertook, &c. to pay him so much money in one year, &c.; and the said plaintiff avers that, &c. [Go on; and see forms of the beginnings and conclusions to Declarations postea.]

A Count for the use and occupation of tithes at the suit of executrix of a vicar. [See Executors, &c.]

Quantum meruit.

(a) 1st Count. Omit the word *other* throughout. See Proceedings by and against Clergymen. (b) 2d Count. Here retain the word *other* throughout.

On a composition for tithes.

THOMAS BUND, clerk, complains of Mark Frost, being in the custody of the marshal of the marshalsea of our lord the king, before the king himself, for that whereas the said Thomas on the first day of April, in the year of Our Lord 1766, and long before, was, and from thence hitherto hath been and still is vicar of the vicarage of the parish of Woking in the county of Surrey aforesaid, and as such, during all the time aforesaid, was and still is instituted to all the small tithes, growing, arising, renewing on and coming off and from a certain messuage and divers, to wit, twenty acres of land, with the appurtenances, situate, lying, and being in the parish of Woking aforesaid, in the county aforesaid, and within the bounds, limits, and tithable places of the said parish, which said messuage and land, during all that time aforesaid, have been and still are in the possession and occupation of the said Mark; and whereas the said Mark, on the fifth day of April in the year of Our Lord 1773, at the parish aforesaid, was indebted to the said Thomas in the sum of twenty pounds, for certain small tithes, arising and growing on, and coming off and from the said messuage and land with the appurtenances, before that time sold by the said Thomas to the said Mark at his special instance and request, and by the said Mark, before that time, had and retained to his own use by virtue of a certain agreement or composition for the said small tithes before then made by and between the said Thomas and the said Mark in that behalf, and which said small tithes were payable to the said Thomas so as aforesaid being such vicar of the vicarage aforesaid from the said Mark as occupier and possessor of the said messuage and land with the appurtenances; and being so indebted, the said Mark in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, at the parish aforesaid, undertook; and then and there faithfully promised the said Thomas, to pay him the said sum of money when he should be thereto afterwards requested.

Quantum meruit.

And whereas the said Mark, afterwards, to wit, on the same day and year last aforesaid, at the parish aforesaid, in consideration that the said Thomas so being vicar of the said vicarage, and the said Mark so being occupier and possessor of the said messuage and land with the appurtenances, had before that time permitted the said Mark, at his like special instance and request, to take and receive to his own use certain other small tithes, growing and arising on, and coming off and from the said messuage and land, and which were due and payable to the said Thomas as such vicar of the said vicarage, from the said Mark as being such occupier and possessor of the said messuage and land with the appurtenances thereof, and that the said Mark had, by virtue of that last mentioned permission of the said Thomas, before that time, taken and received to his own use the said last mentioned small tithes, undertook, and then and there faithfully promised the said Thomas to pay him so much money as he therefore reasonably deserved to have; and the said Thomas avers that he therefore reasonably deserved to have of the said Mark other twenty pounds, to wit, at the parish aforesaid, whereof the said Mark then and there had

notice;

notice: yet the said Mark, not regarding his aforesaid several promises and undertakings, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said Thomas in this behalf, hath not yet paid the said several sums of money, or any part thereof, to the said Thomas, (although so to do the said Mark by the said Thomas, afterwards, to wit, on the same day and year last aforesaid, then afterwards at the parish aforesaid, was requested,) but he to do this hath hitherto wholly refused, and still refuses to the said Thomas, to his damage of twenty pounds; and therefore he brings his suit,

MIDDLESEX, to wit. Mary Silvester complains of J. M. &c. for this, to wit, that whereas the said M. on the first of May 1754, and long before, and continually from thence until the exhibiting the bill of the said Mary, was, and yet is, lawfully possessed of the rectory impropriate of the parish of W. in the said county of Middlesex, for a certain term, to wit, for the residue of a certain term of twenty-one years then and yet to come and unexpired: And whereas the said John now is, and for all the time aforesaid was occupier and possessor of divers lands and tenements, that is, forty acres of arable land, forty acres of meadow land, and forty acres of pasture, lying and being within the parish of W. aforesaid, and within the bounds, limits, and tithable places of the said parish: And whereas the said M. so being possessed of the said rectory impropriate as aforesaid, on the day and year first mentioned, and during the whole time aforesaid, was lawfully entitled to have, take, and receive all the tithes of corn, grain, and hay, and other tithes which should annually arise or grow upon the lands and tenements aforesaid, and also the other tithes payable to the said Mary, as possessor of said rectory, for and on account of the lands and tenements aforesaid, during such time as the said Mary should continue so possessed of the said rectory impropriate aforesaid; and the said John, so being occupier and possessor of the lands and tenements aforesaid, he the said J. on the day and year first above mentioned, at W. aforesaid, in said county of Middlesex, in consideration that the said M. at the special instance and request of the said J. would permit and suffer the said John to have and retain to his own use all the tithes of corn, grain, and hay, and other tithes, which should annually arise and grow upon the lands and tenements aforesaid, and also the other tithes payable to the said Mary, as possessor of the said rectory, for and on account of the lands and tenements aforesaid, which should be payable by the said J. to the said M. so long as the said Mary and John should be severally possessed of the said rectory and lands and tenements aforesaid, undertook, and to the said Mary then and there faithfully promised, that he the said John would pay to the said Mary yearly, and every year, for such time as he should so have and retain the tithes aforesaid, at and after the rate of six shillings for and in respect of every acre

Declaration by the impropriator of a rectory against a tenant within the parish, on a composition for tithes by paying a yearly sum for the several acres of land.

of the said land which should be sown with wheat, and at and after the rate of four shillings for and in respect of every acre of the said land which should be sown with any other kind of corn or tares, and at and after the rate of two shillings and sixpence for and in respect of every acre of the said land which should be in grass; and the said Mary doth aver that she the said Mary, afterwards, at the special instance and request of the said John, did permit and suffer the said John to have, retain, and enjoy, all the tithes of corn, grain, and hay, which grew and arose upon the lands and tenements, and also the other tithes, which were payable by the said John to the said Mary, as possessor of the said rectory, and also for and on account of the said lands and tenements for a long space of time, to wit, the space of two years, and that during that time a great quantity, that is, eighty acres of the said land, was sown with wheat, and a great quantity, that is, eighty acres of said land, was sown with corn and tares, and another large quantity of said land, to wit, other eighty acres thereof was in grass, whereby the said John became liable, and according to his said promise and undertaking, so made as aforesaid, ought to have paid to the said Mary a large sum of money, that is, fifty pounds, and another large sum of money, that is, twenty pounds, was also due and payable by the said J. to the said M. for other tithes, for and on account of the said lands and tenements, according to the said promise and undertaking of the said J. so made to the said M. as aforesaid: And whereas also said Mary on the first of May 1756, and for a long time, to wit, for the space of two years then last past, was lawfully possessed of the rectory impropriate of another parish of W. in the county aforesaid; and whereas the said J. for all the time last aforesaid, was occupier and possessor of divers other lands and tenements, to wit, forty acres of other, &c. &c. with the appurtenances, lying and being within the said last mentioned parish of W. and the said J. on the same day and year last mentioned, at W. aforesaid, was indebted to the said Mary in the further sum of pounds, for the tithes of wheat and other corn, tares and hay, before that time for a long time, to wit, for two years, coming, growing, and arising on the said last mentioned lands, and also for other tithes, during that time, within the said last mentioned parish, arising and belonging to the said Mary, as possessor of the said last mentioned rectory, and which the said Mary had permitted and suffered the said John, at his special instance and request, to have and retain to his own use, and being so indebted, &c.: And whereas also the said Mary, on the first of May 1756, and for a long time, to wit, for two years then last past, was lawfully possessed of the rectory impropriate of another parish of W. in the county aforesaid; and whereas the said John, for all the time last aforesaid, was occupier and possessor of divers other lands and tenements, to wit, forty acres of other arable land, &c. with the appurtenances, lying and being within the last mentioned parish of W.; and the said J. on the same day and year last aforesaid,

Quantum me-
ruit.

in consideration that the said M. at the like special instance and request of the said J. had permitted and suffered the said J. to have and retain the tithes of wheat and other corn, tares and hay, before that time for a long time, to wit, for two years, growing, coming, and arising on the said last-mentioned lands; and also had permitted and suffered the said J. at his like special instance and request, to have and retain other things during that time within the said last-mentioned parish, arising and belonging to the said Mary, as possessor of the said last-mentioned rectory, and payable by the said J. to the said M. as the possessor of the said last-mentioned rectory, undertook, &c. [Quantum meruit. Breach.]

G. WINN,

FOR T O L L S.

LONDON, *ff.* The mayor and commonalty and citizens of the city of London complain of defendant being, &c. for that *Indebitatus assumpsit for tolls* whereas, on the eighth day of April 1758, and long before, and continually from thenceforth hitherto, there hath been, and still is, a certain public market and market-place, with the appurtenances, called Newgate Market, lying and being in London aforesaid, part of Newgate Market, at the suit of the lord mayor, &c. of London, thereof in the parish of St. Faith the Virgin, and the other part thereof in the parish of Christ Church; and in the said market-place, during all the time aforesaid, there hath been, and still is, a certain public market, held every day, except on Sundays, for the buying, selling, and exposing to sale victuals or provisions brought thither, or caused to be brought thither, by any person or persons, for selling or exposing the same to sale there; and whereas also the mayor, &c. for all the time aforesaid, have been, and still are, proprietors and owners of all the rates and tolls of and belonging to the said market, and as such during all the time aforesaid were, and yet are, entitled to receive and have of and from all and every person or persons, during all the time aforesaid, *pitching* and exposing to sale victuals and provisions there, the rates and tolls following, that is to say, the sum of sixpence per day for every pack of victuals or provisions *pitched* and exposed to sale in the said market and market-place, for each and every day that the same hath been exposed to sale there: and the sum of twopence a day for every bundle of victuals *pitched* and exposed to sale in the said market or market-place, for each and every day that the same hath been so *pitched* and exposed to sale there; and the sum of one penny a day for each and every ped, basket, or hamper of provisions, *pitched* and exposed to sale in the said market or market-place, for each and every day that the same hath been so exposed to sale there in the said market or market-place: and the said mayor, &c. being so entitled to have and receive the said rates and tolls as aforesaid, while they the said mayor,

mayor, &c. were so entitled to have and receive the same, to wit, on the sixth day of April, A. D. 1758, aforesaid, and on divers other days and times between that day and the twenty-eighth January, A. D. 1759, at L. aforesaid, he the said defendant did *pitch* and expose to sale, and caused to be *pitched* and exposed to sale, in the said market and market-place, divers packs of victuals and provisions, and divers bundles of victuals and provisions, to wit, one thousand bundles of victuals and provisions, and divers peds, baskets, and hampers of victuals and provisions, to wit, one thousand, &c. ; by reason whereof he the said defendant became indebted to the said mayor, &c. in the sum of forty-five pounds six shillings and eightpence, being at and after the rate of sixpence for every pack, twopence for every bundle, and one penny for every ped, basket, and hamper of said one thousand packs, one thousand bundles, one thousand peds, one thousand baskets, and one thousand hampers of victuals and provisions so by him the said defendant *pitched* and exposed to sale in the said market and market-place : and being so indebted, he the said defendant, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, at, &c. aforesaid, undertook, and then and there faithfully promised the said mayor, &c. to pay them the said sum of money when he should be thereto afterwards requested : and whereas, &c. (Add a second Count like the first, exposing to sale only, without *pitching*.) Money had and received. Common conclusion. [See Burr. 1402. 1407. 2. Will. 95. 1. T. Rep. 618. See Proceedings by Corporations.]

Declaration in
C. P. for tolls,
lock fees, duties,
&c. due on the
River Aire, in
Yorkshire.

YORKSHIRE, *ss.* James Fenton, late of the parish of Leeds, in the said county, coal-merchant, was attached to answer unto John Burton, esquire, George Dawer, John Douglass, and Joseph Atkinson, in a plea of trespass on the case, &c. ; and thereupon the said plaintiffs, by A. B. their attorney, complain, that whereas the River Aire, in the county of York, on the second day of November, 1757, and long before, was, and from thence hitherto hath been, navigable and passable for barges, boats, lighters, and other vessels from the town of Leeds, in the said county of York, down to a certain place called Knottingley, in the same county, and situate upon the same river, and beyond that place down to a certain other place called Wheeland, situate upon the said river : and whereas the said plaintiffs, for all the time aforesaid, have been, and still are, proprietors or farmers of the rates or tolls hereafter mentioned, and lawfully entitled to ask, demand, receive, and take from all and every person and persons, during the time aforesaid, sending down coals, corn, or glass bottles, during that time carried or conveyed down the said river in any boat, barge, or vessel, from the said town of Leeds to the said place called Wheeland, or from the said town of Leeds to the said place called Knottingley, the rates and tolls hereafter mentioned, that is to say, for every ton of coals carried and conveyed down the said river, in any boat, barge, or vessel, from the
said

said town called L. to the said place called W. the rate or toll of three shillings ; for every ton of coals carried or conveyed down the said river, in any boat, barge, or vessel, from L. aforesaid to K. aforesaid, the rate or toll of two shillings and twopence (a) ; and for every ton of glass-bottles carried and conveyed down in any boat, barge, or vessel, down the said river, from L. aforesaid to W. aforesaid, the rate or toll of nine shillings and sixpence ; and for every ton of glass-bottles carried or conveyed down from L. aforesaid to K. aforesaid, the rate or toll of six shillings and fourpence ; for every quarter of corn carried or conveyed down the said river, in any boat, barge, or vessel from L. aforesaid to W. aforesaid, the rate or toll of sixpence ; and for every quarter of corn carried or conveyed down the said river in any boat, barge, or vessel, from L. aforesaid to K. aforesaid, the rate or toll of fourpence : and whereas, during the time aforesaid, and whilst the said plaintiffs were so entitled to the rates and tolls aforesaid, that is to say, on the second day of November, A. D. 1737, and on divers other days and times between that day and the first January 1739, he the said defendant did send down divers tons of coals, to wit, five thousand tons of coals, and a great quantity of glass-bottles, that is to say, one hundred tons of glass-bottles, and a great quantity of corn, to wit, one hundred quarters of corn ; which said coals, glass-bottles, and corn, so sent down the said river by the said defendant, were carried and conveyed in certain boats, barges, and vessels, down the said river, from the said town of L. aforesaid to K. aforesaid ; and that during the time last-mentioned the said defendant did send down, &c. (the same quantity as before, only from the town of L. to W. aforesaid) ; and by reason of the premises the said defendant became liable to pay to the said plaintiffs a large sum of money for the rates and tolls aforesaid, for the said coals, glass-bottles, and corn respectively sent, carried, and conveyed, down the river as aforesaid, during the time aforesaid, that is to say, the sum of one thousand and thirty-seven pounds (b), to wit, at L. aforesaid, in the said county of York ; and being so liable, he the said defendant, in consideration thereof, afterwards, to wit, on, &c. at, &c. aforesaid, undertook, &c. : and whereas the said defendant afterwards, to wit, on the same day and year last aforesaid, at, &c. aforesaid, was indebted to the said plaintiffs in five hundred pounds for the rates and tolls of divers other goods, wares, and merchandizes, by the said defendant before that time sent, carried, and conveyed down the said river in the said boats or vessels, from the said town of L. aforesaid to W. aforesaid, and of divers other goods, &c. by the said defendant before that time sent, carried, and conveyed down the said river, in certain boats or vessels, from the said town of L. to K. aforesaid, before that time of right due and payable from the said defendant to the said plaintiffs ; and

(a) It is necessary to be correct in the sums alleged to be due. *Qy.* If there is no variation in these tolls in the winter season, because the Act makes a difference ?

(b) Be exact in the computation of what the whole of the several quantities of goods alleged to be carried amount to.

being

Count on a note
for lock fees,
&c.

being so indebted, &c. : and whereas the said plaintiffs, at the time of the making of the promissory note hereafter mentioned, were partners in and jointly entitled to have, receive, and take, certain rates, tolls, or dues, called lock dues, from any person or persons sending coals, or other goods or merchandises which had been carried or conveyed down the said River Aire, in any boat or vessel, to K. aforesaid : and whereas the said defendant, on the seventeenth day of August, A. D. , at, &c. aforesaid, made and signed his said note in writing, commonly called a promissory note, and then and there delivered the same to the said plaintiffs, and thereby promised to pay to the said plaintiffs, &c. &c. for value received by lock dues of coals, &c. charged at K. to the first July then last past : by reason whereof, &c. (go on with common conclusion). [For which see beginnings and endings of Declarations].

ED. BOOTLE.

For toll on wool
brought at a mar-
ket.

WHEREAS on the seventeenth day of September, A. D. 1780, and long before, and continually since hitherto, there hath been, and still is, a public market and market-place, with the appurtenances, called N. Market, lying and being at N. in the county of Hants, aforesaid, and held on every Tuesday and Friday in every week during all the time aforesaid, for buying, selling, and exposing to sale of wool brought to the said market : and whereas the said plaintiff, on the said seventeenth day of September, A. D. 1780, aforesaid, and from thence until the fourth day of October, A. D. 1781, aforesaid, was proprietor and farmer of the rates and tolls paid and payable in such market, and entitled to take of all and every person and persons, during the time aforesaid, buying wool in the said market or market-place, the rate or toll following, that is to say, sevenpence for every pack of wool that have or hath been so bought in the said market or market-place by such buyer or buyers respectively : and whereas the said plaintiff, so being the proprietor and farmer of the rates and tolls aforesaid, and being so entitled to take of such buyer or buyers of wool in the said market or market-place such rate or toll as aforesaid, he the said defendant, whilst the said plaintiff was such proprietor, &c. and entitled to take such rates and tolls, to wit, on the seventeenth day of September, A. D. 1780, at and in the said market or market-place, at Newport aforesaid, did buy certain wool, to wit, one hundred packs of wool, which had been and were on the day and year last aforesaid exposed to sale in the said market and market-place : by reason whereof he the said defendant became and was indebted and liable to pay to the said plaintiff the sum of, &c. ; and being so indebted, &c. (Go on, and see beginnings and endings of Declarations).

For toll due to a
corporation for
passing over a
bridgewithlead-
ed carriage.

WHEREAS the borough of S. is an antient borough : and whereas the burghers of the said borough, from time whereof the memory of man is not to the contrary, hath been a body politic and corporate, in fact and in name, nevertheless, at divers times, by various

Various names of incorporation, until the seventh day of September, in the year of the reign of George the First, by the name of the burgesses of S. in the county of D. ; and on the, &c. by the name of the bailiffs, burgesses, and community of the borough of S. in the county of D. ; and then afterwards, to wit, on, &c. and from thence hitherto by the name of the bailiffs, burgesses, and community of the borough of S. in the county of D. : and the said bailiffs, &c. further say, that from time whereof, &c. there hath been, and still is, within the said borough, a certain antient bridge, called L. Bridge, over and across a certain antient navigable river, called O. River, running through the said borough ; and that the said bailiffs, &c. and all their predecessors, by such their several names of incorporation as aforesaid, have from time to time, and for all the time whereof, &c. repaired, maintained, and supported, and have been used and accustomed to repair, maintain, and support the said bridge with all necessary repairs and amendments ; and by reason thereof, the said bailiffs, &c. and their predecessors, by such their several names of incorporation as aforesaid, have, for all such time as aforesaid, had and received, and have been used and accustomed to have and receive, and still of right ought to have and receive, by their ministers and servants, of every person (not being a burgess or freeman of the said borough) a certain duty or toll for every loaded waggon or loaded cart passing over the said bridge : and the said bailiffs, &c. by their attorney aforesaid, further say, that the said defendant was not on, &c. or at any time before or since, nor is now, a burgess or freeman of the said borough of S. but a foreigner to the liberties and freedom thereof ; and that a certain loaded waggon of the said defendant on the said, &c. and on divers other days and times between that day and the fourteenth day of July, that is to say, at ninety-nine other times, passed and was driven over the said bridge ; by means whereof the said defendant became indebted to the said bailiffs, &c. in the sum of forty pounds of lawful, &c. (being at and after the rate of threepence for each and every time that the said loaded waggon of the said defendant had passed and was driven over the said bridge during the time aforesaid) ; and being so indebted, &c. Second Count like the first, *For the passage* only for a certain *loaded cart*. Third Count, And whereas the said defendant afterwards, to wit, on, &c. at, &c. was indebted, &c. for divers duties and tolls due and payable by the said defendant to the said bailiffs, &c. for the passage of divers loaded waggons and loaded carts of the said defendant, before that time passed and drawn over the said bridge, which said bridge the said bailiffs, &c. and their predecessors, by their said several names of incorporation, from time whereof, &c. have from time to time repaired and supported, and have been used and accustomed to repair and support ; and being so indebted, &c. Fourth Count, Indebitatus assumpsit for certain *antient dues and tolls* before that time due and payable by and from the said defendant to the said bailiffs, &c. *for the passage* of, &c. (as before). Fifth Count, Indebitatus assumpsit for a *certain antient toll* before that time due and payable, &c. for the passage of, &c. before

before that time passed and drawn over the said bridge, at and after the rate of threepence for each and every of such loaded waggons, &c. so passing and being drawn over the said bridge, in consideration and by reason that the said bailiffs, &c. and other their predecessors, by such names of incorporation as aforesaid, have from time to time, during all such time as aforesaid, repaired and supported, and been used and accustomed to repair and support the said bridge, with all necessary reparations and amendments; and being so indebted, &c. [See beginnings and endings to Declarations. See also Proceedings by and against Corporations.]

3. Burr. 1403, 7. a declaration at the *port duties*. See General Index, and *assuit* of the corporation of Yarmouth for *index to General Indebitatus Assumpsit*.

Declaration for tolls passing over the bridge of A. stating the manor an antient manor in the crown, in right of the Duchy of Lancaster, and lease from king William 3^d. to A. B. for 99 years. Assignment of the said lease from A. B. to C. D. under lease from C. D. to E. F. and G. C. D. died. Further lease from G. D.'s executors to E. F. and G. G. E. dies, leaving O. P. & the plaintiff executors. O. P. dies, leaving plaintiff executor and the interest of the lease. Various carriage tolls obtained.

YORKSHIRE, to wit. The right honourable Thomas lord Pelham complains of J. Pickersgill being, &c. for that whereas the manor of B. in the county of Y. is a manor of the antient demesne of the crown of England, as by the record of the book of Doomſday appears, and whereas the said manor was the inheritance and parcel of the possessions of the crown of England and of the duchy of Lancaster respectively at divers periods for a long time, to wit, until the reign of Edward sixth, late king of England, &c. and afterwards: and whereas all and singular the kings and queens of this realm in right of the said crown of England and duchy of Lancaster respectively for the time being, from time whereof the memory of man is not known to the contrary, have in respect of such manor by their respective bailiffs and farmers for the time being, had, taken, and received, and had been used and accustomed to have, take, and receive, and of right ought to have had, taken, and received, and still of right ought to have, take, and receive at the bridge of the borough, otherwise Boroughbridge, within the said manor, a certain reasonable toll, that is to say, a toll of fourpence for every wayne or waggon laden coming, going, or passing that way over the said manor, payable and paid during all the time aforesaid by the proprietor or proprietors of such wayne or waggon laden so coming, going, or passing over the said manor as aforesaid, to the said bailiffs or farmers of the said kings and queens of this realm for the time being, for and in consideration of such liberty of passage with such wayne or waggon laden over the said manor, save and except the waynes or waggons of any person or persons lawfully exempt from the payment of the said toll. And whereas the office of receiving the said toll within the said manor by the respective bailiffs and farmers of the said kings and queens of this realm for the time being, long before and at the time of the making of the grant and demise hereafter next mentioned, had been, and was called, known, and distinguished by the name of the bailiwick of the borough of Boroughbridge, in the county of York, and which said bailiwick, and the said tolls long before the making the grant and demise hereafter mentioned, had been annexed to, and

and then were parcel of the possessions of the ancient dutchy of Lancaster. And whereas William the third, late king of England, &c. on the nineteenth of April 1697, was seised of the said bailiwick with the appurtenances and of the said tolls in his demesne as of fee in right of the said dutchy of Lancaster, and being so seised, the late king William the third, by his indenture of lease then made and sealed with his seal of his said then majesty's said dutchy of Lancaster, bearing date the same day and year last above mentioned, and duly inrolled (one part of which said indenture sealed with the seal of his said majesty's said dutchy of Lancaster, the said lord Pelham now brings here into court, the date whereof is the same day and year last aforesaid) for the consideration therein mentioned, by and with the advice and consent of his chancellor and the council of his said dutchy of Lancaster, did grant, demise, set, and to farm let unto Robert H. knight, (among other things) all that the said bailiwick of the borough of Boroughbridge, in the said county of York, together with the said several and respective tolls there and which are therein described to be parcel of the possessions of his said majesty's dutchy of Lancaster, to hold the same unto the said sir Robert Howard, his executors, administrators and assigns, for and during the full time and term of ninety-nine years, to commence from and after the decease of her majesty Catherine queen dowager of England from thence next ensuing, and fully to be compleat and ended; by virtue of which said demise he the said sir R. H. became intituled to the reversion expectant on the decease of the said queen, of and in the said bailiwick and tolls, and all the rights and privileges, powers and authorities thereunto belonging, for and during the said term thereby granted; and being so entitled he the said sir R. H. by his indenture of assignment, sealed with his own seal, and made on the seventeenth day of June 1697, at Boroughbridge aforesaid, between him the said sir R. H. of the one part, B. B. of, &c. esquire, of the other part, (one part of which said indenture, sealed with the seal of the said sir R. the said lord Pelham now brings here into court, the date whereof is the same day and year last aforesaid) for the consideration of pounds to him paid by the said B. B. did bargain, sell, assign, transfer, and set over unto the said B. B. his executors, administrators and assigns, all the interest, estate, and term of ninety-nine years, in as large, ample, and beneficial a manner and form to all intents and purposes, as he the said sir R. H. his executors or administrators had, or might, or ought to have and enjoy the same, by force and virtue of the said recited indenture of lease to him the said sir R. H. granted as aforesaid, or any thing therein contained; by virtue of which said indenture of assignment he the said B. B. became intituled to the reversion expectant on the demise of the said queen, of and in the said bailiwick and tolls, and all the rights and privileges, powers and authorities thereunto belonging, for and during the remainder of the said term of ninety-nine years. And the said lord Pelham saith, that after the making of the said indenture of assignment, (that is to say) on the twentieth day of

Lease from K. Wm. 3. to sir R. H. for 99 years.

Assignment of the said lease by sir R. H. to B. B.

December

Underlease
from B. B. to
the duke of N.
and H. P.

December 1705, the said Catherine queen dowager of England died, and thereupon the said R. B. entered into the said bailiwick, and became and was possessed thereof, and of the said tolls, and all the rights, privileges, powers, and authorities thereunto belonging, for the residue of the said term of ninety-nine years; and being so possessed, the said B. B. by a certain indenture of lease made on the twenty-second of May, in the thirteenth year of the reign of his late majesty king George the first, and in the year 1727, at Boroughbridge aforesaid, between him the said B. B. by his name and addition of B. B. of, &c. in the county of Rutland, esquire, of the one part, and the most noble Thomas Holles, D. of N. one of his then majesty's principal secretaries of state, and knight of the most noble order of the garter, and the right honourable Henry Pelham, esquire, his then majesty's secretary at war, and one of the lords of his then majesty's most honourable privy council, only brother of the said duke, of the other part (one part of which said indenture sealed with the seal of the said B. B. the said lord P. now brings here into court, the date whereof is the same day and year last aforesaid) for the considerations therein mentioned, did demise, lease, set, and to farm let unto the said T. H. duke of Newcastle, and H. P. their executors, administrators and assigns (among other things) all that the said bailiwick of the borough of Boroughbridge in the county of York, together with the said tolls there, and all and singular the rights, members, and appurtenances unto the said bailiwick and tolls belonging, to hold the same unto the said T. H. duke of N. and H. P. their executors, administrators, and assigns, from, &c. for and during and unto the full end and term of years from thenceforth next ensuing, and fully to be compleat and ended; yielding and paying therefore unto the said B. B. his executors, administrators, and assigns, the yearly rent or sum of pounds, at certain times therein mentioned; by virtue of which said last-mentioned indenture of lease, they the said T. H. duke of N. and H. P. esquire, entered into the said bailiwick and became possessed thereof, and of the tolls and other the premises herein before mentioned, for and during the said term of seven years, the residue of the said term of ninety-nine years belonging to the said B. B. And being so possessed and intitled, the said B. B. afterwards, to wit, on the eighth of April 1728, at Boroughbridge aforesaid, duly made and published his last will and testament in writing, and thereby gave unto his son, W. B. all and singular his the said B. B.'s lease for seven years, goods and chattels, and personal estate whatsoever, and did thereby constitute and appoint the said W. B. sole executor of the said will: and the said B. B. after the making and publishing of his said will, to wit, on the same day and year last aforesaid, at Boroughbridge aforesaid, departed this life, without revoking or altering the same, so possessed and entitled as aforesaid: and the said W. B. after the death of the said B. B. (that is to say) on the tenth day of June 1728, to wit, at Boroughbridge aforesaid, duly proved the said will of the said B. B. in the prerogative court of the archbishop of York, being
the

B. B. dies.

the proper court for that purpose, and took upon himself the execution thereof; by virtue of which said will of the said B. B. the said W. B. on the day and year last aforesaid, became intitled to the said bailiwick, tolls, and other the premises herein before mentioned, for and during the residue of the said term of ninety-nine years. And being so intitled, the said W. B. by his indenture of lease made the eleventh day of July, in the third year of the reign of his late majesty king George the second, and in the year 1729, at Boroughbridge aforesaid, between him the said W. B. by his name and addition of W. B. &c. esquire, of the one part, and the said T. H. duke of N. and H. P. of the other part (one part of which said indenture, sealed with the seal of the said W. B. the said lord P. now brings here into court, the date whereof is the day and year last aforesaid) for the consideration therein mentioned; did grant, lease, set, and to farm let unto the said T. H. duke of N. and H. P. esquire, their executors, administrators, and assigns; (among other things) all that the said bailiwick of the borough of Boroughbridge, in the county of York, together with the said tolls there, and all and singular their rights, members, and appurtenances; to hold the same unto the said T. H. duke of Newcastle, and H. P. their executors, administrators, and assigns, from the determination of the said term of seven years, for and during and unto the full end and term of seventy years eight months and twenty days from thence next ensuing; and fully to be completed and ended; yielding and paying therefore unto the said W. B. his executors, administrators, and assigns, the yearly rent of Further lease from B. B.'s executors to the said duke and H. P. pounds, at certain times thereinmentioned; by virtue of which said last-mentioned indenture of lease they the said T. H. duke of Newcastle, and H. P. became and were intitled to the said bailiwick, tolls, and other the premises herein before mentioned, for and during the said term of seventy years eight months and twenty days, from the determination of the said term of seven years. And they the said T. H. duke of N. and H. P. being so possessed and intitled as aforesaid, the said H. P. afterwards, and after the expiration of the said term of seven years, to wit, on the sixth of March 1754, at Boroughbridge aforesaid, died, the said T. H. duke of N. him H. P. dies, the duke surviving. surviving; and thereupon the said T. H. duke of N. became solely possessed and entitled of in and to the said bailiwick, tolls, and other the premises herein before mentioned, for and during the residue of the said term of seventy years eight months and twenty days. And being so possessed as aforesaid, the said T. H. duke of N. afterwards, to wit, on the 29th of February 1768, at Boroughbridge aforesaid, duly made and published his last will and testament in writing, and thereby gave and bequeathed Henrietta dutchess of N. by the description, name, and title of his dear wife the dutchess of N. her executors and administrators, all his personal estate, and did, of that his will, nominate, constitute, and appoint his said dear wife, and the right honourable T. H. (now the said plaintiff, lord Pelham) executors; and the said T. H. duke of N. after the making and publishing of his said will, to

The duke dies, wit, on the same day and year last aforesaid, at Boroughbridge aforesaid, departed this life without revoking or altering the same, so possessed and entitled as aforesaid: whereupon the said H. dutchess of N. and the said lord P. afterwards, to wit, on the same day and year last aforesaid, at Boroughbridge aforesaid, duly proved the said will in the proper ecclesiastical court, and took upon themselves the execution thereof, and entered into, and became and were possessed of the said bailiwick, tolls, and other the premises herein before mentioned, for and during the residue of the said term of seventy years eight months and twenty days. And being so possessed, the said Henrietta dutchess of N. afterwards, to wit, on the seventh day of October 1772, at Boroughbridge, aforesaid, duly made and published her last will and testament in writing, and thereby, after several devises and bequests therein contained, gave, devised, and bequeathed unto the said lord P. by the description of her friend Thomas lord P. all her estate, term, and interest of and in the said bailiwick and tolls, and did constitute and appoint him the said Thomas lord P. sole executor of that her will; and the said H. dutchess of N. after the making and publishing of her said will, to wit, on the same day and year last aforesaid, at Boroughbridge aforesaid, departed this life, without revoking or altering the same: and the said lord, after the said H. dutchess of N. (that is to say) on the twenty-second day of July 1776, to wit, at Boroughbridge aforesaid, duly proved the said will of the said H. dutchess of N. in the proper ecclesiastical court, and took upon himself the execution thereof; by virtue of which said premises the said lord P. became, and was, and still is possessed of the said bailiwick of the borough of Boroughbridge, in the county of Y. and the said toll there, and all and singular the rights, members, and appurtenances thereto belonging, for the residue of the said term of seventy years eight months and twenty days. And being so thereof possessed, the said J. P. afterwards, to wit, on the first day of January 1780, and on divers other days and times between that time and the first day of May 1785, came, went, or passed with his wayne or waggon loaden divers, to wit, twelve hundred times by and at the south end of the said bridge of the borough, otherwise Boroughbridge, over the said manor, the said J. P. at those several times not being lawfully exempt from the payment of the said toll, whereby the said J. P. became liable to pay to the said lord P. as and for the tolls due and payable to the said lord P. for the passage of such wayne or waggon loaden over the said manor as aforesaid, a large sum of money, to wit, the sum of twenty pounds, being fourpence a time for each and every time of the said J. P. coming, going, and passing with his said wayne or waggon loaden over the said manor as aforesaid; whereof the said J. P. afterwards, to wit, on the same day last aforesaid, at Boroughbridge aforesaid, in the county aforesaid, had notice; and being so liable, he the said J. P. in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, at Boroughbridge aforesaid, in the county aforesaid, undertook, and then

The dutchess dies, leaving the plaintiff executor, and the interest of the heirs.

and there faithfully promised the said lord P. to pay him the said sum of money when he the said J. P. should be thereto requested. And whereas the manor of B. is a manor of the ancient demesne of the crown of England, as by the record of the book of Doomesday appears; and whereas the said manor was the inheritance and part of the possessions of the crown of England and of Lancaster respectively, at divers periods, for a long time, to wit, until the reign of Edward the sixth, late king of England, &c. and afterwards; and whereas the town of Burghbridge, otherwise Burrowbridge, now is, and from time whereof the memory of man is not to the contrary, hath been within and parcel of the same manor; and whereas all and singular the kings and queens of this realm in right of his said crown of England and dutchy of Lancaster respectively for the time being, from the time whereof the memory, &c. In respect of such manor by their respective bailiffs and farmers for the time being, had, taken, and received, and have been used and accustomed to have, take, and receive, and of right ought to have had, taken, and received, and still of right ought to have, take, and receive at the bridge of Burrowbridge, within the said town, a certain reasonable toll, that is to say, a toll of four-pence for every wayne or waggon loaden, coming, going, or passing that way over the said town, payable and paid during all the time aforesaid by the proprietor or proprietors of such wayne or waggon load so going, or passing over the said town as aforesaid, to the said bailiffs or farmers of the said kings and queens of this realm for the time being, for and in consideration of such liberty of passage with such wayne or waggon loaden over the said town, save and except the waynes or waggons of any person or persons lawfully exempt from the payment of the said toll; and whereas the office of receiving the said tolls within the said town by the respective bailiffs and farmers of the said kings and queens of this realm for the time being, long before, and at the time of the making of the grant and demise hereafter next mentioned, had been, and was called, known, and distinguished by the name of the bailiwick of the borough of Boroughbridge in the county of York, and which said bailiwick and the said tolls, long before the making the grant and demise hereafter next mentioned, had been annexed to, and then were parcel of the possessions of the ancient dutchy of Lancaster; and whereas William the third, late king of England, &c. on the nineteenth day of April 1697 aforesaid, was seised of the said bailiwick with the appurtenances and of the said tolls in his demesne as of fee, in right of his dutchy of Lancaster; and being so seised, the said late king William the third by his indenture of lease then made, and sealed with the seal of his said then majesty's said dutchy of L. bearing date the same day and year last above mentioned, and duly enrolled (one part of which said indenture, sealed with the seal of his said majesty's dutchy of Lancaster, the said lord P. now brings here into court, the date whereof is the same day and year last aforesaid) for the considerations therein mentioned, by and with the advice and consent of his said chancellor and council of his said

ad Count,
Claiming 4d. for
every waggon
passing over the
town.

dutchy of L. did grant, demise, set, and to farm let unto R. H. knight, (among other things), all that the said bailiwick of the borough of Boroughbridge, in the said county of York, together with the said several and respective tolls there, and which are therein described to be parcel of the possessions of his said majesty's ancient dutchy of L. to hold the same unto the said sir R. H. his executors, administrators, and assigns, for and during the full time and term of ninety-nine years, to commence from and after the decease of her majesty Catherine then queen dowager of England, from thence next ensuing to be fully compleat and ended; by virtue of which said demise, he the said sir R. H. became intituled to the reversion expectant upon the decease of the said queen, of and in the said bailiwick and tolls, and all the rights, privileges, powers, and authorities thereunto belonging for and during the said term thereby granted. And being so intituled, the said sir R. H. by his indenture of assignment, sealed with his seal, and made on the seventeenth day of June 1697, at Boroughbridge aforesaid, between him the said sir R. H. of the one part, and B. B. of the parish of St. Margaret's, Westminster, in the said county of Middlesex, esquire, of the other part, (one part of which said indenture, sealed with the seal of the said sir R. the said lord P. now brings here into court, the date whereof is the same day and year last aforesaid) for the consideration of pounds to him paid by the said B. B. did bargain, sell, assign, transfer, and set over to the said B. B. his executors, administrators, and assigns, all the interest, estate, and term of ninety-nine years of him the said sir R. H. of and in the said bailiwick and the tolls thereof, to hold the same unto the said B. B. his executors, administrators, and assigns, for the residue of the said term of ninety-nine years, in as large, ample, and beneficial a manner and form to all intents and purposes as he the said sir R. H. his executors or administrators had, or might, or ought to have and enjoy the same, by force and virtue of the said recited indenture of lease to him the said sir R. H. granted as aforesaid, or any thing therein contained; by virtue of which said indenture of assignment he the said B. B. became entitled to the reversion expectant on the decease of the said queen, of and in the said bailiwick and tolls, and all the rights and privileges, powers and authorities thereunto belonging, for and during the remainder of the said term of ninety-nine years. And the said lord P. saith, that after the making of the indenture of assignment (that is to say) on the twentieth day of December 1705, the said Catherine, queen dowager of England, died, and thereupon the said B. B. entered into the said bailiwick, and became and was possessed thereof, and of the said tolls, and all the rights, privileges, powers, and authorities thereunto belonging, for the residue of the said term of ninety-nine years. And being so possessed, the said B. B. by a certain indenture of lease made on the twenty-second day of May, in the thirteenth year of the reign of his late majesty king George the first, and in the year of Our Lord 1727, at Boroughbridge aforesaid, between him the said B. B. by his
name

name and addition. of B. B. of, &c. esq. of the one part, and the most noble lord T. H. duke of N. one of his then majesty's principal secretaries of state, and knight of the most noble order of the garter, and the right honourable H. P. esquire, his majesty's then secretary at war, and one of the lords of his then majesty's most honourable privy council, only brother of the said duke, of the other part, (one part of which said indenture, sealed with the seal of the said B. B. the said lord P. now brings here into court, the date whereof is the same day and year last aforesaid) for the considerations therein mentioned, did demise, lease, set, and to farm let unto the said T. H. duke of N. and H. P. their executors, administrators, and assigns, (among other things) all that the said bailiwick of the said borough of Boroughbridge, in the county of York, together with the said tolls there, and all and singular the rights, members, and appurtenances unto the said bailiwick and tolls belonging; to hold the same unto the said T. H. duke of N. and H. P. their executors, administrators, and assigns, from the feast of the Annunciation of the blessed Virgin Mary, then last past, before the date thereof, for and during and unto the full end and term of seven years from thenceforth next ensuing, and fully to be compleat and ended; yielding and paying therefore unto the said B. B. his executors, administrators, or assigns, the yearly rent or sum of pounds, at certain times therein mentioned; by virtue of which said last mentioned indenture of lease, they the said T. H. duke of N. and H. P. esquire, entered into the said bailiwick, and became possessed thereof, and of the tolls and other the premises herein before mentioned, for and during the term of seven years, the residue of the said term of ninety-nine years, belonging to the said B. B. And being so possessed and entitled, the said B. B. afterwards, to wit, on the eighth of April 1728, at Boroughbridge aforesaid, duly made and published his last will and testament in writing. and thereby gave unto his son, W. B. all and singular his the said B. B.'s leases for years, goods, chattels, and personal estate whatsoever, and did thereby constitute and appoint W. B. sole executor of the said will: and the said B. B. after the making of his said will, to wit, on the same day and year last aforesaid, at Boroughbridge aforesaid, departed this life without revoking or altering the same, so possessed and intitled as aforesaid. And the said W. B. after the death of the said B. B. that is to say, on the tenth day of June 1728, to wit, at Boroughbridge aforesaid, duly proved the said will of the said B. B. in the prerogative court of the archbishop of York, being the proper court for that purpose, and took upon himself the execution thereof; by virtue of which said will of the said B. B. the said W. B. on the day and year last above mentioned, became intitled to the said bailiwick, tolls, and other the premises herein before mentioned, for and during the residue of the said term of ninety-nine years. And being so intitled, the said W. B. by his indenture of lease made the eleventh of July, in the third year of the reign of his late majesty king George the second, and in the year 1729, at Boroughbridge aforesaid,

said, between him the said W. B. by his name and addition of W. B. of , esquire, of the one part, and the said T. H. duke of Newcastle and H. P. of the other part (one part of which said indenture, sealed with the seal of the said W. B. the said lord P. now brings here into court, the date whereof is the day and year last aforesaid) for the consideration therein mentioned, did grant, lease, fet, and to farm let unto the said T. H. duke of N. and H. P. their executors, administrators, and assigns (amongst other things) all that the said bailiwick of the said borough of Boroughbridge in the county of Y. together with the said tolls there, and all and singular their rights, members, and appurtenances; to hold the same unto the said T. H. duke of N. and H. P. their executors, administrators, and assigns, from the determination of the said term of seven years, for and during and unto the full end and term of seventy years eight months and twenty days from thence next ensuing, and fully to be compleat and ended; yielding and paying therefore unto the said W. B. his executors, administrators, and assigns, the yearly rent or sum of one hundred and thirty pounds at certain times therein mentioned; by virtue of which said last mentioned indenture of lease, they the said T. H. duke of N. and H. P. became and were entitled to the said bailiwick, tolls, and other the premises herein before mentioned, for and during the said term of seventy years eight months and twenty days, from the determination of the said term of seven years. And they the said T. H. duke of Newcastle and H. P. being so possessed and intitled as aforesaid, the said H. P. afterwards, and after the expiration of the said term of seven years, to wit, on the day of March 1754, at Boroughbridge aforesaid, died, the said T. H. duke of N. him surviving; and thereupon the said T. H. duke of N. became solely possessed and intitled of, in, and to the said bailiwick, tolls, and other the said premises herein before mentioned, for and during the residue of the said term of seventy years eight months and twenty days. And being so possessed as aforesaid, the said T. H. duke of N. afterwards, to wit, on the twenty-ninth day of February 1768, at Boroughbridge aforesaid, duly made and published his last will and testament in writing, and thereby gave and bequeathed to H. duchess of N. by the description, name, and title, of his dear wife the dutchess of N. her executors and administrators, all his personal estate, and did of that his will nominate, constitute, and appoint his said dear wife, and the right honourable T. P. (now the said plaintiff lord P.) executors; and the said T. H. duke of N. after the making and publishing of his said will, to wit, on the same day and year last aforesaid, at Boroughbridge aforesaid, departed this life without revoking or altering the same, so possessed and intitled as aforesaid: whereupon the said H. dutchess of N. and the said lord P. afterwards, to wit, on the same day and year last aforesaid, at B. aforesaid, duly proved the said will in the proper ecclesiastical court, and took upon themselves the execution thereof, and by virtue thereof entered into and became, and were possessed of the said bailiwick, tolls,

tolls, and other the premises herein before mentioned, for and during the residue of the said term of seventy years eight months and twenty d.ys. And being so possessed, the said H. dutchess of N. afterwards, to wit, on the seventh day of October 1772, at B. aforesaid, duly made and published her last will and testament in writing, and thereby, after several devises and bequests therein contained, gave, devised, and bequeathed unto the said lord P. by the description of her friend T. lord P. all her estate, term, and interest of and in the said bailiwick and tolls, and did constitute and appoint him the said T. lord P. sole executor of that her will; and the said H. dutchess of N. after the making and publishing of her said will; to wit, on the same day and year last aforesaid, at B. aforesaid, departed this life without revoking or altering the same; and the said lord P. after the death of the said H. dutchess of N. that is to say, on the twenty-third day of July 1776, to wit, at B. aforesaid, duly proved the said will of the said H. dutchess of N. in the proper ecclesiastical court, and took upon himself the execution thereof; by virtue of which said premises the said lord P. became, and was and still is possessed of the said bailiwick of the borough of Boroughbridge in the said county of Y. and the said tolls there, and all and singular the rights, members, and appurtenances thereunto belonging. for the residue of the said term of seventy years eight months and twenty days. And being so thereof possessed, the said J. P. afterwards, to wit, on the first day of January 1780, and on divers other days and times between that day and the first day of May 1783, came, went, or passed with his wayne or waggon loaden divers, to wit, one thousand two hundred times, by and at the south end of the said bridge of Boroughbridge over the said town, he the said J. P. at those several times not being lawfully exempt from the payment of the said tolls, whereby the said J. P. became liable to pay to the said lord P. as and for the tolls due and payable to the said lord P. for the passage of such wayne or waggon loaden over the said town as aforesaid, a large sum of money, to wit, the sum of twenty pounds, being fourpence a time for each and every time of the said J. P. coming, going, and passing with his said wayne or waggon loaden over the said town as aforesaid; whereof the said J. P. afterwards, to wit, on the same day and year last aforesaid, at Boroughbridge aforesaid, in the county aforesaid, had notice; and being so liable, he the said J. P. in consideration thereof afterwards, to wit, on the same day and year last aforesaid, at Boroughbridge aforesaid, in the said county, undertook and then and there faithfully promised the said lord P. to pay him the said last mentioned sum of money when he the said J. P. should be thereto requested. And where-
as the manor of B. in the county of York, is a manor of the ancient demesne of the crown of England, as by the record of the book of Doomesday appears; and whereas the said manor was the inheritance and parcel of the possessions of the crown of England and of the dutchy of L. respectively, at divers periods for a long time, to wit, until the reign of Edward the sixth, late king

3d Count, Over
the manor, 6d.

of England, and afterwards; and whereas all and singular the kings and queens of this realm, in right of the said crown of E. and dutchy of L. respectively for the time being, from time whereof, &c. have in respect of such manor by their respective bailiffs and farmers for the time being, had, taken, and received, and have been used and accustomed to have, take, and receive, and of right ought to have had, taken, received, and still of right ought to have, take, and receive at the bridge of the Borough, otherwise Boroughbridge within the said manor, a certain reasonable toll, that is to say, a toll of sixpence for every wayne or waggon loaden, coming, going, or passing that way over the said manor, payable and paid, during all the time aforesaid, by the proprietor or proprietors of such wayne or waggon loaden so coming, going, or passing over the said manor as aforesaid, to the said bailiffs or farmers of the said kings and queens of this realm for the time being, for and in consideration of such liberty of passage with such wayne or waggon loaden over the said manor, save and except the waynes or waggons of any person or persons lawfully exempt from the payment of the said toll; and whereas the office of receiving the said tolls within the said manor by the respective bailiffs and farmers of the said kings and queens of this realm for the time being, long before, and at the time of the making of the grant and demise hereafter next mentioned, had been, and was called, known, and distinguished by the name of the bailiwick of the borough of Burrowbridge, in the county of Y. and which said bailiwick and the said tolls, long before the making the grant and demise hereafter next mentioned, had been annexed to and then were parcel of the possessions of the ancient dutchy of Lancaster; and whereas William the third, late king of England, on the ninth day of April 1697 aforesaid, was seised of the said bailiwick with the appurtenances and of the said tolls in his demesne as of fee, in right of his said dutchy of Lancaster; and being so seised, the said late king William the third by indenture of lease then made, and sealed with the seal of his said then majesty's said dutchy of Lancaster, bearing date the same day and year last above mentioned, and duly inrolled, (one part of which said indenture, sealed with the seal of his said majesty's dutchy of Lancaster, the said lord P. now brings here into court, the date whereof is the same day and year last aforesaid) for the considerations therein mentioned, by and with the advice and consent of his chancellor and the council of his said dutchy of L. did grant, demise, set, and to farm let unto R. H. knight, (amongst other things) all that the said bailiwick of the borough of Boroughbridge in the said county of Y. together with the said several and respective tolls there, and which are therein described to be parcel of the possessions of his said majesty's ancient dutchy of Lancaster, to hold the same unto the said sir R. H. his executors, administrators, and assigns, for and during the full time and term of ninety-nine years, to commence from and after the decease of her majesty Catherine, then queen dowager of England, from thence next ensuing fully

to be compleat and ended; by virtue of which said demise he the said sir R. H. became entitled to the reversion expectant on the decease of the said queen of and in the said bailiwick and tolls, and all the rights and privileges, powers and authorities thereunto belonging, for and during the said terms thereby granted. And being so intituled, the said sir R. H. by his indenture of assignment sealed with his seal, and made on the seventeenth day of June 1697, at

aforesaid, between him the said sir R. H. of the one part, and B. B. of, &c. esquire, of the other part (one part of which said indenture, sealed with the seal of the said sir R. the said lord P. now brings here into court, the date whereof is the same day and year last aforesaid) for the consideration of

pounds, to him paid by the

said B. B. did bargain, sell, assign, transfer, and set over unto the said B. B. his executors, administrators, and assigns, all the interest, estate, and term of ninety-nine years of him the said sir R. H. of and in the said bailiwick and the tolls thereof, to hold the same unto the said B. B. his executors, administrators, and assigns, for the residue of the said term of ninety-nine years, in as large, ample, and beneficial manner and form to all intents and purposes as he the said sir R. H. his executors or administrators, had or might or ought to have and enjoy the same by force and virtue of the said recited indenture of lease to him the said sir R. H. granted as aforesaid, or any thing therein contained; by virtue of which said indenture of assignment he the said B. B. became intituled to the reversion expectant on the decease of the said queen, of and in the said bailiwick and tolls, and all the rights and privileges, powers and authorities thereunto belonging, for and during the remainder of the said term of ninety-nine years. And the said lord P. saith, that after the making of the said indenture of assignment, that is to say, on the twentieth day of December 1705, the said Catherine, queen dowager of E. died, and thereupon the said B. B. entered into the said bailiwick, and became and was possessed thereof, and of the said tolls, and all the rights, privileges, powers and authorities thereunto belonging, for the residue of the said term of ninety-nine years. And being so possessed, the said B. B. by a certain indenture of lease made on the twenty-second day of May, in the thirteenth year of king George the first, and in the year 1727, at

aforesaid, between him the said B. B. by his name and addition of B. B. of, &c. of the one part, and the most noble lord T. H. duke of N. one of his majesty's then principal secretaries, &c. &c. and the right honourable H. P. esquire, his then majesty's secretary at war, &c. only brother of the said duke, of the other part, (one part of which said indenture, sealed with the seal of the said B. B. the said lord P. now brings here into court, the date whereof is the same day and year last aforesaid) for the consideration therein mentioned, did demise, lease, set, and to farm let unto the said T. H. duke of N. and H. P. their executors, administrators and assigns (among other things)

things) all that the bailiwick of the borough of Boroughbridge in the county of Y. together with the said tolls there, and all and singular the rights, members, and appurtenances, unto the said bailiwick and tolls belonging; to hold the same unto the said T. H. duke of N. and H. P. their executors, administrators and assigns, from, &c. for and during and unto the full end and term of years from thenceforth next ensuing, and fully to be compleat and ended; yielding and paying therefore unto the said B. B. his executors, administrators, or assigns, the yearly rent or sum of l. at certain times therein mentioned; by virtue of which said last-mentioned indenture of lease, they the said T. H. duke of N. and H. P. esquire, entered into the said bailiwick and became possessed thereof, and of the tolls and other the premises herein before mentioned, for and during the said term of seven years, the residue of the said term of ninety nine years, belonging to the said B. B. And being so possessed and intitled, the said B. B. afterwards, to wit, on the eighth day of April 1728, at aforesaid, duly made and published his last will and testament in writing, and thereby gave unto his son W. B. all and singular the said B. B.'s leases for years, goods, chattels, and personal estate whatsoever, and did thereby constitute and appoint the said W. B. sole executor of his said will; and the said B. B. after the making and publishing of his said will, to wit, on the same day and year last aforesaid, at B. aforesaid, departed this life without revoking or altering the same, so possessed and intitled as aforesaid. And the said W. B. after the death of the said B. B. that is to say, on the tenth day of June 1728, to wit, at B. B. aforesaid, duly proved the said will of the said B. B. in the prerogative court of the archbishop of Y. being the proper court for that purpose, and took upon himself the execution thereof; by virtue of which said will of the said B. B. the said W. B. in the day and year last aforesaid, became intitled to the said bailiwick, tolls, and other the premises herein before mentioned, for and during the said residue of the said term of ninety-nine years. And being so intitled, the said W. B. by his indenture of lease made the eleventh day of July, in the third year, &c. of king George the second, and in the year 1729, at Boroughbridge aforesaid, between him the said W. B. by his name and addition of W. B. of, &c. of the one part, and the said T. H. duke of N. and H. P. esquire, of the other part (one part of which said indenture sealed with the seal of the said W. B. the said lord P. now brings here into court, the date whereof is the day and year aforesaid) for the consideration therein mentioned, did grant, lease, set, and to farm let unto the said T. H. duke of N. and H. P. their executors, administrators, and assigns (among other things) all that the said bailiwick of the borough of Boroughbridge, in the county of Y. together with the said tolls there, and all and singular the rights, members, and appurtenances; to hold the same unto the said T. H. duke of N. and H. P. their executors, administrators, and assigns, from, &c. for and during and unto the full end and term of years from thence next ensuing, and

said dutcheſs of N. in the proper eccleſiaſtical court, and took upon himſelf the execution thereof; by virtue of which ſaid premiſes the ſaid lord P. became, and was and ſtill is poſſeſſed of the ſaid bailiwick of the borough of Boroughbridge in the county of Y. and the ſaid tolls there, and alſo all and ſingular the rights, members, and appurtenances thereunto belonging, for the reſidue of the ſaid term of ſeven y years eight months and twenty days. And being ſo thereof poſſeſſed, the ſaid J. P. afterwards, to wit, on the ſaid firſt day of January 1780, and on divers other days and times between that day and the firſt day of May 1785, came, went, and paſſed with his wayne or waggon loaden divers, to wit, one thouſand two hundred times over the ſaid manor, by and at the ſouth end of the ſaid bridge, he the ſaid J. P. at thoſe ſeveral times not being lawfully exempt from the payment of the ſaid tolls; whereby the ſaid J. P. became liable to pay to the ſaid lord P. for the paſſage of ſuch wayne or waggon loaden over the ſaid manor as aforeſaid, a large ſum of money, to wit, the ſum of thirty pounds, being ſixpence a time for each and every time of the ſaid J. P. coming, going, or paſſing with his ſaid wayne or waggon loaden over the ſaid manor as aforeſaid; whereof the ſaid J. P. afterwards, to wit, on the ſame day and year laſt aforeſaid, at Boroughbridge aforeſaid, in the county aforeſaid, had notice; and being ſo liable, he the ſaid J. P. in conſideration thereof, afterwards, to wit, on the ſame day and year laſt aforeſaid, at Boroughbridge aforeſaid, in the county aforeſaid, undertook, and then and there faithfully promiſed the ſaid lord P. to pay him the ſaid laſt mentioned ſum of money when he the ſaid J. P. ſhould be thereto requeſted. And whereas the manor of B. in the county of Y. is a manor of the ancient demefne of the crown of England, as by the record of the book of Doomeſday appears; and whereas the ſaid manor was the inheritance and parcels of the poſſeſſions of the crown of England, and of the dutchy of L. reſpectively at divers periods for a long time, to wit, until the reign of Edward the ſixth, late king of England, &c. and afterwards; and whereas the town of B. now is, and from time whereof, &c. hath been within and parcel of the ſame manor; and whereas all and ſingular the kings and queens of this realm, in right of the ſaid crown of England and dutchy of Lancaſter reſpectively, for the time being, from time whereof, &c. have in reſpect of ſuch manor by their reſpective bailiffs and farmers for the time being, had, taken and received, and have been uſed and accuſtomed to have, take, and receive, and of right ought to have had, taken, and received, and ſtill of right ought to have, take, and receive at the bridge of Boroughbridge within the ſaid town, a certain reaſonable toll, that is to ſay, a toll of ſixpence for every wayne or waggon loaden, coming, going, or paſſing that way over the ſaid town, payable and paid during the time aforeſaid, by the proprietor or proprietors of ſuch wayne or waggon loaden ſo coming, going, or paſſing over the ſaid town, to the ſaid bailiffs or farmers of the ſaid kings and queens of this realm for the time being, for and in conſideration of ſuch liberty of paſſage with ſuch wayne

4th Count, Over
 the town, 6d.

or waggon loaden over the said town, save and except the wayntes or waggons of any person or persons lawfully exempt from the payment of the said toll; and whereas the office of receiving the said tolls within the said town, by the respective bailiffs and farmers of the said kings and queens of this realm for the time being, long before, and at the time of the making the grant and demise hereafter next mentioned, had been and was called, known, and distinguished by the name of the bailiwick of the borough of Burrowbridge, in the county of York, and which said bailiwick, and the said tolls, long before the making of the grant and demise hereafter next mentioned, had been annexed to and then were parcel of the possessions of the ancient dutchy of L.; and whereas William the third, late king of E. &c. on the nineteenth of April 1697 aforesaid, was seised of the said bailiwick with the appurtenances and of the said tolls in his demesne as of fee, in right of his said dutchy of L. and being so seised, the said late king William the third, by his indenture of lease then made and sealed with the seal of his said then majesty's said dutchy of L. bearing date the same day and year last above mentioned, and duly enrolled, (one part of which said indenture, sealed with the seal of his said majesty's dutchy of L. the said lord P. now brings here into court, the date whereof is the same day and year last aforesaid), for the consideration therein mentioned, by and with the advice and consent of his chancellor or council of his said dutchy of L. did grant, demise, set, and to farm let unto R. H. knight (among other things), all that the said bailiwick of the said borough of Burrowbridge, in the said county of Y. together with the said several and respective tolls there, and which are therein described to be parcel of the possessions of his majesty's ancient dutchy of L. to hold the same unto the said sir R. H. his executors, administrators, and assigns, for and during the full time and term of ninety-nine years, to commence after the decease of her majesty Catherine then queen dowager of England, from thence next ensuing, and fully to be compleat and ended; by virtue of which said demise he the said sir R. H. became intitled to the reversion expectant on the decease of the said queen, of and in the said bailiwick and tolls, and all the rights, privileges, powers, and authorities thereunto belonging, for and during the said term thereby granted. And being so intitled, the said sir R. H. by his indenture of assignment, sealed with his seal, and made on the seventeenth day of June 1697, at Burrowbridge aforesaid, between him the said sir R. H. of the one part; and B. B. of, &c. of the other part, (one part of which said indenture, sealed with the seal of the said sir R. H. the said lord P. now brings here into court, the date whereof is the same day and year last aforesaid), for the consideration of ——— to him paid by the said B. B. did bargain, sell, assign, transfer, and set over unto the said B. B. his executors, administrators, and assigns, all the interest, estate, and term of ninety-nine years of him the said R. H. of and in the said bailiwick and the tolls thereof; to hold the same unto the said B. B. his executors, &c. for the residue

residue of the said term of ninety-nine years, in as large, ample, and beneficial manner, to all intents and purposes, as he the said sir R. H. his executors, or administrators had, or might, or ought to have and enjoy the same, by force and virtue of the said recited indenture of lease to him the said sir R. H. granted as aforesaid, or any thing therein contained; by virtue of which said indenture of assignment he the said B. B. became entitled to the reversion expectant on the decease of the said queen, of and in the said bailiwick and tolls, and all the rights and privileges, powers and authorities, thereunto belonging, for and during the remainder of the said term of ninety-nine years. And the said lord P. saith, that after the making of the said indenture of assignment, that is to say, on the twentieth day of December 1705, the said C. queen dowager of E. died, and thereupon the said B. B. entered into the said bailiwick, and became and was possessed thereof, and of the said tolls, and all the rights, privileges, powers and authorities thereunto belonging, for the residue of the said term of ninety-nine years. And being so possessed, the said B. B. by a certain indenture of lease made on the twentieth of May, in the thirteenth year of the reign of his late majesty king George the first, and in the year 1727, at Burrowbridge aforesaid, between him the said B. B. by his name and addition of B. B. of, &c. esquire, of the one part; and the most noble T. H. duke of Newcastle, one of his then majesty's, &c. &c. and the right honourable H. P. esquire, his then majesty's, &c. &c. brother of the said duke, of the other part, (one part of which said indenture, sealed with the seal of the said B. B. the said lord P. now brings here into court, the date whereof is the same day and year last aforesaid), for the considerations therein mentioned, did demise, lease, set, and to farm let unto the said T. H. duke of N. and H. P. their executors, &c. (among other things) all that the said bailiwick of the said borough of Boroughbridge in the county of York, together with the said tolls there, and all and singular the rights, members, and appurtenances unto the said bailiwick and tolls belonging; to hold the same unto the said T. H. duke of N. and H. P. their executors, &c. from, &c. then last past, for and during and unto the full end and term of seven years from thence next ensuing, and fully to be compleat and ended; yielding and paying therefore unto the said B. B. his executors, &c. the yearly rent or sum of pounds at certain times therein mentioned; by virtue of which said last mentioned indenture of lease they the said T. H. duke of N. and H. P. esquire, entered into the said bailiwick, and became possessed thereof, and of the tolls and other the premises herein before mentioned, for and during the said term of seven years, the residue of the said term of ninety-nine years, belonging to the said B. B. And being so possessed and intitled, the said B. B. afterwards, to wit, on the eighth of April 1728, at Boroughbridge aforesaid, duly made and published his last will and testament in writing, and thereby gave unto his son W. B. all and singular the said B. B.'s leases for years, goods and chattels, and personal

sonal estates whatsoever, and did thereby constitute and appoint the said W. B. sole executor of his said will; and the said B. B. after the making and publishing of his said will, to wit, on the same day and year last aforesaid, at Boroughbridge aforesaid, departed this life without revoking or altering the same, so possessed and intituled as aforesaid. And the said W. B. after the death of the said B. B. that is to say, on the tenth of June 1728, to wit, at Boroughbridge aforesaid, duly proved the said will of the said B. B. in the prerogative court of the archbishop of Y. being the proper court for that purpose, and took upon himself the execution thereof; by virtue of which said will of the said B. B. the said W. B. on the day and year last aforesaid, became intituled to the said bailiwick, tolls, and other the premises herein before mentioned, for and during the said residue of the said term of ninety-nine years. And being so intituled, the said W. B. by his indenture of lease made the eleventh of July, in the third year of the reign of his late majesty king George the second, and in the year 1729, at Boroughbridge aforesaid, afterwards, between him the said W. B. by his name and addition of, &c. of the one part, and the said T. H. duke of N. and H. P. esquire, of the other part, (one part of which said indenture, sealed with the seal of the said W. B. the said lord P. now brings here into court, the date whereof is the day and year last aforesaid), for the considerations therein mentioned, did grant, lease, set, and to farm let unto the said T. H. duke of N. and H. P. their executors, &c. (among other things) all that the said bailiwick of the borough of Boroughbridge in the county of Y. together with the said toll there, and all and singular the rights, members, and appurtenances; to hold the same unto the said T. H. duke of N. and H. P. their executors, &c. from the determination of the said term of seven years, for and during the full end and term of seventy years eight months and twenty days from thence next ensuing, and fully to be compleat and ended; yielding and paying therefore unto the said W. B. his executors, &c. the yearly rent of pounds, at certain times therein mentioned; by virtue of which said last mentioned indenture of lease, they the said T. H. duke of N. and H. P. became and were entitled to the said bailiwick, tolls, and other the premises herein before mentioned, for and during the said term of seventy years eight months and twenty days, from the determination of the said term of seven years. And the said T. H. duke of N. and H. P. being so possessed and intituled as aforesaid, the said H. P. afterwards, and after the expiration of the said term of seven years, to wit, on the sixth of March 1754, at Boroughbridge aforesaid, died, the said T. H. duke of N. him surviving; and thereupon the said T. H. duke of N. became solely possessed and intituled of, in, and to the said bailiwick, tolls, and other the premises herein before mentioned, for and during the residue of the said term of seventy years eight months and twenty days. And being so possessed as aforesaid, the said T. H. duke of N. afterwards, to wit, on the twenty-ninth of February 1768, at
Borough-

Boroughbridge aforesaid, duly made and published his last will and testament in writing, and thereby gave and bequeathed to H. dutchess of N. by the description, name, and title of his dear wife the dutchess of N. her executors and administrators, all his personal estate, and did of that his will nominate, constitute, and appoint his said dear wife and the right honourable T. P. (now the said plaintiff lord P.) executors; and the said T. H. duke of N. after the making and publishing of his said will, to wit, on the same day and year last aforesaid, at Boroughbridge aforesaid, departed this life without revoking or altering the same, so possessed and intitled as aforesaid: whereupon the said H. dutchess of N. and the said lord P. afterwards, to wit, on the same day and year last aforesaid, at Boroughbridge aforesaid, duly proved the said will in the proper ecclesiastical court, and took upon themselves the execution thereof, and by virtue thereof entered into and became and were possessed of the said bailiwick, tolls, and other the premises herein before mentioned, for and during the residue of the said term of seventy years eight months and twenty days. And being so possessed, the said H. dutchess of N. afterwards, to wit, on the seventh day of October 1772, at Boroughbridge aforesaid, duly made and published her last will and testament in writing, and thereby, after several devises and bequests therein contained, gave, devised, and bequeathed unto the said lord P. by the description of her friend T. lord P. all her estate, term, and interest of and in the said bailiwick and tolls, and did constitute and appoint him the said T. lord P. sole executor of that her will; and the said H. dutchess of N. after the making and publishing of her said will, to wit, on the same day and year last aforesaid, at Boroughbridge aforesaid, departed this life without revoking or altering the same; and the said lord P. after the death of the said H. dutchess of N. that is to say, on the twenty-second of July 1776, to wit, at Boroughbridge aforesaid, duly proved the said will of the said H. dutchess of N. in the proper ecclesiastical court, and took upon himself the execution thereof; by virtue of which said premises the said lord P. became, and was, and still is possessed of the said bailiwick of the borough of Boroughbridge in the said county of Y. and the said tolls there, and all and singular the rights, members, and appurtenances thereunto belonging, for the residue of the said term of seventy years eight months and twenty days. And being so thereof possessed, the said J. P. afterwards, to wit, on the first of January 1780, and on divers other days and times between that day and the first of May 1785, came, went, and passed with his wayne or waggon loaden divers, to wit, one thousand two hundred times over the said town, by and at the south end of the said bridge of Boroughbridge, he the said J. P. at those several times not being lawfully exempt from the payment of the said tolls, whereby the said J. P. became liable to pay to the said lord P. as and for the tolls due and payable to the said lord P. for the passage of such wayne or waggon loaden over the said town as aforesaid, a large sum of money, to wit, the sum of

thirty

thirty pounds, being sixpence a time for each and every time of the said J. P. coming, going, and passing with his said wayne or waggon loaden over the said town as aforesaid, whereof the said J. P. afterwards, to wit, on the same day and year last aforesaid, at Boroughbridge aforesaid, in the county aforesaid, had notice; and being so liable, he the said J. P. in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, at B. aforesaid, in the county aforesaid, undertook, and then and there faithfully promised the said lord P. to pay him the said last mentioned sum of money, when he the said J. P. should be thereto requested.

And whereas the manor of Aldbridge, otherwise Boroughbridge, otherwise Allbridge and Bridge, otherwise Boroughbridge and Aldbridge, in the county of York, is an ancient manor; and whereas the said lord P. on the first of January 1780, was, and from thenceforth hitherto hath been, and still is, lawfully intitled to have, take, and receive, and during all that time of right ought to have had, taken, and received, at the bridge of the Borough, otherwise Boroughbridge, within the said manor, a certain reasonable, that is to say, a toll of fourpence for every wayne or waggon loaden, coming, going, or passing that way over the said manor, payable during all the time aforesaid, by the proprietor or proprietors of such wayne or waggon loaden, so coming, going, or passing over the said manor as aforesaid, to the said lord P. for the passage of such wayne or waggon loaden over the said manor, save and except the waynes or waggons of any person or persons lawfully exempt from the payment of the said toll; and whereas the said lord P. being so intitled as aforesaid, the said J. P. not being lawfully exempt from the payment of the said toll, afterwards, to wit, on the said first of January 1780, and on divers other days and times between that day and the first of May 1785, came, went, and passed with his wayne or waggon loaden divers, to wit, one thousand two hundred times over the said manor by and at the south end of the said bridge of the Borough, otherwise Boroughbridge, he the said John P. at those several times not being lawfully exempt from the payment of the said toll, whereby the said J. P. became liable to pay to the said lord P. as and for the toll of such wayne or waggon loaden, so coming, going, and passing over the said manor as aforesaid, a large sum of money, to wit, the sum of twenty pounds, being fourpence a time for each and every time of the said J. P. coming, going, and passing with his said wayne or waggon loaden over the said manor as aforesaid; whereof the said J. P. afterwards, to wit, on the same day and year last aforesaid, at Boroughbridge aforesaid, in the county aforesaid, had notice; and being so liable, he the said J. P. in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, at B. aforesaid, in the county aforesaid, undertook, and then and there faithfully promised the said lord P. to pay him the said last mentioned sum of money, when he the said J. P. should be thereto requested: And whereas the town of Burrowbridge, in

5th Count, That lord P. was intitled generally for toll over his manor of Aldbridge otherwise Boroughbridge toll.

6th Count, Stating Boroughbridge to be an ancient town for tolls passing over the town.

bridge to be an ancient town for tolls passing

the county of Y. is an ancient town; and whereas the said lord P. on the first of January 1780, was, and from thenceforth hitherto hath been and still is lawfully intitled to have, take, and receive, and during all that time of right ought to have had, taken, and received at the bridge of Burrowbridge within the said town, a certain reasonable toll, that is to say, a toll of fourpence for every wayne or waggon loaden coming, going, or passing that way over the said town, payable during all the time aforesaid, by the proprietor or proprietors of such wayne or waggon loaden, so coming, going, or passing over the said town as aforesaid, to the said lord Pelham, for the passage of such wayne or waggon loaden over the said town, save and except the waynes and waggons of any person or persons lawfully exempt from the payment of the said toll; and whereas the said lord P. being so intitled as aforesaid, the said John P. afterwards, to wit, on the first day of January 1780, and on divers other days and times between that day and the said first of May 1785, came, went, and passed with his wayne or waggon loaden divers, to wit, one thousand two hundred times over the said town, by and at the south end of the said bridge, he the said J. P. at those several times not being lawfully exempt from the payment of the said toll, whereby the said J. P. became liable to pay to the said lord P. as and for the tolls for such wayne or waggon loaden, so coming, going, and passing over the said town as aforesaid, a large sum of money, to wit, the sum of pounds, being fourpence a time for each and every time of the said John P.'s coming, going, and passing with his said wayne or waggon loaden over the said town as aforesaid; whereof the said J. P. afterwards, to wit, on the same day and year last aforesaid, at Boroughbridge aforesaid, to wit, on the same day and year last aforesaid, at B. aforesaid, in the county aforesaid, had notice; and being so liable, he the said J. P. in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, at B. aforesaid, in the county aforesaid, undertook, and then and there faithfully promised the said lord P. to pay him the said last mentioned sum of money when he the said J. P. should be thereto requested. And whereas the manor of Aldborough, otherwise Buirow-Bridge, otherwise Aldboro and Burrow-Bridge, otherwise Boro-Bridge and Aldboro, in the county of York, is an ancient manor, and that the said lord P. on the first day of January 1780, was, and from thenceforth hitherto hath been and still is, lawfully intitled to have, take, and receive, and during all that time of right ought to have had, taken, and received at the bridge of Boroughbridge within the said manor, a certain reasonable toll, that is to say, a toll of sixpence for every wayne or waggon loaden coming, going, or passing that way over the said manor, payable during all the time aforesaid by the proprietor or proprietors of such wayne or waggon loaden so coming, going, or passing over the said manor as aforesaid, to the said lord P. for the passage of such wayne or waggon loaden over the said manor as aforesaid, save and except the waynes or waggons of any person or persons lawfully exempt from the payment of

9th Count, Over
the manor of
Aldborough.

of the said toll; and whereas the said lord P. being so intitled as aforesaid, the said J. P. not being lawfully exempt from the payment of the said toll, afterwards, to wit, on the first day of January 1780, and on divers other days and times between that day and the first day of May 1785, came, went, and passed with his wayne or waggon loaden divers, to wit, one thousand two hundred times over the said manor by and at the south end of the said bridge, he the said J. P. at those several times not being lawfully exempt from the payment of the said toll, whereby the said J. P. became liable to pay to the said lord P. as and for the tolls of such wayne or waggon loaden, so coming, going, and passing over the said manor as aforesaid, a large sum of money, to wit, the sum of thirty pounds, being sixpence a time for each and every time of the said John P. coming, going, and passing with his wayne or waggon loaden over the said manor as aforesaid; whereof the said J. P. afterwards, to wit, on the same day and year last aforesaid, at Boroughbridge aforesaid, in the county aforesaid, had notice; and being so liable, he the said J. P. in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, at Burrowbridge aforesaid, in the county aforesaid, undertook, and then and there faithfully promised the said lord P. to pay him the said last mentioned sum of money, when he the said J. P. should be thereto requested. And whereas the town of Boroughbridge, in the county of Y. is an ancient town; and whereas the said lord P. on the first day of January 1780, was, and from thenceforth hitherto hath been and still is, lawfully intitled to have, take, and receive, and during all that time of right ought to have had, taken, and received at the bridge of Boroughbridge within the said town, a certain reasonable toll, that is to say, a toll of sixpence for every wayne or waggon loaden coming, going, or passing that way over the said town as aforesaid, to the said lord P. for the passage of such wayne or waggon loaden over the said town, save and except the waynes or waggons of any person or persons lawfully exempt from the payment of the said toll; and whereas the said lord P. being so intitled as aforesaid, the said J. P. afterwards, to wit, on the said first day of January 1780, and on divers other days and times between that day and the first day of May 1785, came, went, and passed with his wayne or waggon divers, to wit, one thousand two hundred times over the said town, by and at the south end of the said bridge of Boroughbridge, he the said J. P. at those several times not being lawfully exempt from the payment of the said toll, whereby the said J. P. became liable to pay to the said lord P. as and for the tolls of such wayne or waggon, so coming, going, and passing over the said town as aforesaid, a large sum of money, to wit, the sum of pounds, being sixpence a time for each and every time of the said John P. coming, going, and passing with his said wayne or waggon loaden over the said town as aforesaid; whereof the said J. P. afterwards, to wit, on the same day and year last aforesaid, at B. aforesaid, in the county aforesaid, had

8th Count, Ancient town of Boroughbridge for passing over the town.

9th. A general Count, stating all the ancient names of the manor for passing over the manor.

notice; and being so liable, he the said J. P. in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, at Boroughbridge aforesaid, in the county aforesaid, undertook, and then and there faithfully promised the said lord P. to pay him the said last mentioned sum of money, when he the said J. P. should be thereto requested. And whereas the said J. P. on the same day and year last aforesaid, at B. aforesaid, was indebted to the said lord P. in the further sum of one hundred pounds of like lawful money, for the tolls before that time due and of right payable from the said J. P. to the said lord P. for the passage of divers cattle and carriages over the manor of Bure, otherwise Burg, otherwise Aldburg, otherwise Aldborough, otherwise Burg-Brigge, otherwise Boroughbridge, otherwise Aldborough and Boroughbridge, otherwise Boroughbridge and Aldborough, in the said county; and for the passage of divers other cattle and carriages over the town of Burghbridge, otherwise Boroughbridge, in the same county; and being so indebted, he the said J. P. in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, at B. aforesaid, in the county aforesaid, undertook, and then and there faithfully promised the said lord P. to pay him the said last mentioned sum of money, when he the said J. P. should be thereto requested: Yet the said J. P. in no wise regarding his said several promises and undertakings, made in manner as aforesaid, but contriving, &c. to deceive and defraud the said lord P. in this respect, hath not paid to the said lord P. the said several sums of money, or any part thereof, though so to do he the said J. P. afterwards, to wit, on the said several days and times last above mentioned, and often afterwards, to wit, at B. aforesaid, in the county of Y. aforesaid, was requested by the said lord P.; but to pay the same, or any part thereof, to the said lord P. he the said J. P. hath hitherto wholly refused, and still doth refuse; whereupon the said lord P. saith that he is injured, and hath sustained damage to the value of one thousand pounds; and therefore he brings suit, &c.

G. WOOD.

General indebtedness *assumpsit* by a toll-gate keeper for tolls accrued due for passing through with horses, carts, &c.

CHESHIRE, to wit. James Bridgeway complains of Thomas Harrop being, &c. in a plea of trespass on the case, &c. for that whereas, long before and on the first day of January A. D. 1792, and from thence continually hitherto, there hath been, and still is, a certain public king's highway, leading from the market town of A. in the county of Chester, to the market-town of B. in the same county, for all his majesty's liege subjects to go, return, pass, and repass upon and over by themselves, and with cattle, carts, and carriages, at all times at their will and pleasure: and whereas during all the times aforesaid, certain tolls and duties have been of right due and payable by all persons going and passing upon and along the said king's highway with cattle, carts, and carriages; and the said James, during all the time aforesaid, hath been, and still is, occupier and keeper of a certain toll-house and gate

gate upon the said king's highway, situate in the parish of S. in the said county of C. and farmer of the same tolls and duties, and lawfully entitled to ask, demand, and receive the same there for all cattle, carts, and carriages passing along the said highway through the said gate: and whereas, during the time aforesaid, and while the said James was so entitled to the tolls and duties aforesaid, that is to say, on the day and year aforesaid, and on divers other days and times between that day and the commencement of this suit, he the said Thomas did go, return, pass, and repass with divers cattle, carts, and carriages, by and along the said highway and through the said gate, and by reason thereof became liable to pay to the said James, for the tolls and duties for the same of right payable as aforesaid, a large sum of money, to wit, the sum of twenty pounds, of lawful money of Great Britain: and being so liable, he the said Thomas, in consideration thereof, afterwards, to wit, on the seventh day of February, A. D. 1792, at the parish aforesaid, in the county aforesaid, undertook, and faithfully promised the said James to pay him the said sum of money, when he the said Thomas should be thereunto afterwards requested. And whereas the said Thomas afterwards, to wit, on ^{ad Count, A} the day and year last aforesaid, at the parish aforesaid, in the coun- ^{farmer &c.} ty aforesaid, was indebted to the said James in the sum of twenty pounds, of like lawful money, for certain other tolls and duties then and there due and payable from the said Thomas to the said James, as the farmer and collector of the said tolls and duties of right due and payable for cattle, carts, and carriages passing and repassing by and along the said king's highway, for and in respect of certain cattle, carts, and carriages of the said Thomas having before that time, at divers days and times, gone, passed and repassed upon, along, and over the said highway, whilst the said James was such farmer and collector as aforesaid; and being so indebted, he the said Thomas, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at the parish aforesaid, in the county aforesaid, undertook, and then and there faithfully promised the said James to pay him the said last mentioned sum of money, when he the said Thomas should be thereto afterwards requested. (Counts for money paid, lent and advanced; accounts stated, and common conclusion.) Pledges, &c.

CORNWALL, to wit. The mayor and free burgesses of the borough of Saltash complain of Maynard Sparks being, ^{For tolls and} &c. for ^{port duties.} that whereas the said mayor and free burgesses, on the 13th day of October A. D. 1759, were, and from thence continually hitherto have been, and still are, lawfully entitled to have and receive a certain reasonable toll or duty called tonnage, that is to say, for every ton of goods belonging to any natural-born subject or subjects of this realm imported in any ship or vessel in the port of Saltash, and there unloaded, unless by measure, to be paid by the master and commander of such ship or vessel (such goods not belonging to any person

ad Compt. For
quartermaster
grain.

person or persons, or imported in any ship or vessel, in that behalf exempt) : and the said mayor and free burgesses further say, that whilst they were so entitled to have and receive the said toll or duty, to wit, on the first day of January, A. D. 1760, divers goods, to wit, forty tons of flour, belonging to a natural-born subject or natural-born subjects of this realm, were imported in a certain ship or vessel, into the said port of S. to wit, at the parish of Menne, in the said county of C. and there unloaded, and not by measure, of which said ship or vessel the said Maynard was then and there master or commander, the person or persons to whom the said goods belonged, or the said ship or vessel in which the said goods were so imported, not then being exempt from the said toll or duty in that behalf; by reason of which said premises, the said Maynard became liable to pay to the said mayor and free burgesses six shillings and eight-pence, being at and after the rate of two pence for every ton of the said goods so imported by the said Maynard into the said port of S. and there unloaded as aforesaid, to wit, at the parish aforesaid; whereof the said Maynard afterwards, to wit, on the same day and year last aforesaid, then had notice; and being so liable, the said Maynard in consideration thereof, afterwards, on the same day and year last aforesaid, at the parish aforesaid, in the said county, undertook, and to the said mayor and free burgesses faithfully promised, to pay to them the sum of six shillings and eight-pence, when he should be thereto afterwards requested. And whereas also the said mayor and free burgesses, on the said thirteenth day of October, A. D. 1759, and from thence hitherto continually have been, and still are, lawfully entitled to have and receive a certain reasonable toll or duty called *quartermaster*, that is to say, one halfpenny for every quarter of goods belonging to any natural-born subject or subjects of this realm, loaded by measure into any ship or vessel within the said port of S. to be exported in such ship or vessel from thence, or imported in any ship or vessel within the said port, and there unloaded by measure out of such ship or vessel, the said toll or duty called *quartermaster* to be paid by the master and commander of such respective ship or vessel in that behalf empty, when empty : and the said mayor and free burgesses further say, that whilst they the said mayor and free burgesses were entitled to have and receive the said last-mentioned toll or duty, to wit, on the first day of January, A. D. 1760, a large quantity of grain, to wit, oats amounting to a great number of quarters, to wit, one thousand quarters, belonging to a natural-born subject or natural-born subjects, were loaded into a certain ship or vessel within the said port of S. to wit, at the parish of M. aforesaid, in the said county of C. in order to be exported in such ship or vessel from thence, of which said ship or vessel he the said Maynard was then and thence master and commander, and the person or persons to whom the said grain so belonged in the ship or vessel in which the said grain was so loaded as aforesaid, not then being exempt from the said *last-mentioned* toll or duty; by reason of which said premises, the said Maynard became

became liable to pay to the said mayor and free burgesses two pounds one shilling and eight-pence, being at and after the rate of one halfpenny by the quarter for every quarter of the said grain so loaded into the said ship or vessel within the said port of S. as aforesaid, to wit, at the parish aforesaid; whereof the said Maynard afterwards, to wit, on the same day and year aforesaid, there had notice; and being so liable, &c. promised, &c. And whereas also the said mayor and free burgesses, on the said thirteenth day of October, A. D. 1759, and from thence continually hitherto have been, and still are, lawfully entitled to have and receive a certain other toll or duty called quarterage, that is to say, one penny for every quarter of goods belonging to any natural-born subject or subjects of this realm, loaded by measure into any ship or vessel within the said port of S. to be exported in such ship or vessel from thence, or imported in any ship or vessel within the said port, and there unloaded by measure out of such ship or vessel, the said quarter to be computed according to the ancient water-measure of the said port, and the said toll or duty called quarterage to be paid by the master and commander of such respective ship or vessel, such goods not belonging to any person or persons, or loaded or unloaded into or out of any ship or vessel in that behalf exempt: and the said mayor and free burgesses further say, that whilst they the said mayor and free burgesses were so entitled to have and receive the said *last-mentioned* toll or duty, to wit, on the first day of January, A. D. 1760, a large quantity of oats, amounting to a great number of quarters, to wit, one thousand quarters, according to the ancient water-measure of the said port, belonging to a natural-born subject or subjects of this realm, was loaded into a certain ship or vessel within the said port of S. to wit, at the parish of M. aforesaid, in the county of C. in order to be exported in such ship or vessel from thence; of which said ship or vessel the said Maynard was then and there master and commander, and the said person or persons to whom the said grain so belonged, or the said ship or vessel in which the said grain was so loaded as aforesaid, not then being exempt from the said last-mentioned toll or duty; by reason of which said premises the said Maynard became liable to pay to the said mayor and free burgesses four pounds three shillings and four-pence, being at and after the rate of one penny by the quarter for every quarter of the said grain, according to the said ancient water measure, so loaded in the said ship or vessel within the said port of S. to wit, at the parish aforesaid; whereof the said Maynard afterwards, to wit, on the same day and year last aforesaid, there had notice; and being so liable, &c. promised, &c. And whereas the said port of S. on the said thirteenth of October, A. D. 1759, and long before, was, and from thence hitherto hath been, and still is, a navigable *anchoring* port for all ships or vessels to sail to or from the sea, and to stay and anchor in at all times of the year, to wit, at the parish of R. in the said county of C.: and whereas the said mayor and free burgesses, on the thirteenth of October, A. D. 1759, were, and from

3d Count, For
quarterage on
oath.

4th Count, For
burage and an-
chorage.

thence continually hitherto have been, and still are, lawfully possessed of the said port, and during the time last aforesaid have maintained and supported, and still of right ought to have maintained and supported, and still of right ought to maintain and support, a certain *buoy* floating within the said port, for the benefit and sole direction of ships or vessels during that time sailing into or out of the said port, to or from the sea; and by reason of the said premises, the said mayor and free burgesses, during all the time *last aforesaid*, have been lawfully entitled to have and receive, and of right ought to have had and received, a certain reasonable toll or duty of two shillings of and from every ship or vessel of or belonging to any subject of this realm, sailing from the sea into the said port, and anchoring therein, other than ships or vessels in that behalf exempt. And the said mayor and free burgesses further say, that whilst they were so possessed of the said port, and maintained and supported the said buoy as aforesaid, that is to say, between the said thirteenth of October, A. D. 1759 and the fifteenth of January, A. D. 1769, divers ships or vessels of the said Maynard, to wit, one hundred ships or vessels of the said Maynard, sailed from the sea into the said port of S. and anchored there, to wit, at the parish aforesaid, he the said Maynard during all that time being a subject of this realm, and the said ships or vessels, or any of them, not being during all or any part of that time exempt from the said *last-mentioned* toll or duty, whereby the said Maynard became liable to pay to the said mayor and free burgesses the sum of two shillings for each and every ship or vessel of the said Maynard so sailing from the sea into the said port of S. and anchoring therein as aforesaid, for the toll or duty last aforesaid, amounting in the whole to a large sum of money, to wit, the sum of _____ pounds of lawful, &c. that is to say, at the parish aforesaid, in the county aforesaid; whereof the said Maynard afterwards, to wit, on the same day and year last aforesaid, then had notice; and being so liable, &c. promised, &c. (Fifth Count, for anchorage only. Sixth Count, for *buoyage* only. Seventh Count, for tolls and duties on goods more general. Eighth Count, for tonnage within the liberty and district of the water of Thames, of which the said mayor and free burgesses are proprietors. Like Counts as before, for quarterage, anchorage, buoyage, and with the liberty of the water hammer.) Yet the said Maynard, not regarding his said promises, but, &c. hath not paid, &c.

FOR CONTRIBUTION TO PARTY WALLS (a).

Indebitatus assumpsit in R. R. for contribution to party walls.
14. Geo. III.

J. S. complains of A. P. being, &c. for that whereas after the making of a certain Act, made at the parliament of our sovereign, which had been pulled down and repaired by plaintiff, pursuant to act of parliament

(a) See Actions on Statutes.

lord the now king holden at Westminster, in the county of Middlesex, in the fourteenth year of his reign, and intituled, "An act for the further and better regulation of buildings and party walls, and for the more effectually preventing mischiefs by fire within the cities of London and Westminster, and the liberties thereof, and other the parishes, precincts, and places within the weekly bills of mortality, the parishes of St. Mary le Bonne, Paddington, St. Pancras, and St. Luke at Chelsea, in the county of Middlesex, and for indemnifying, under certain conditions, builders and other persons against the penalties to which they are or may be liable for erecting buildings within the limits aforesaid, contrary to law," to wit, on the first of November, A. D. 1787, a certain old party wall had been pulled down, and a certain other party wall built in lieu thereof, by and at the expence of the said Jonathan, agreeably to the direction of the said act of parliament, between certain buildings of him the said Jonathan, situate and being in the city of L. to wit, in the parish of St. Peter, in the ward of Queenhithe, and certain other buildings there adjoining thereto, being of the same rate or class of buildings as the aforesaid buildings of the said Jonathan; and upon that occasion the said Andrew did make use of a great part of the said last-mentioned party wall, and at the time of building and finishing the same was the owner and person entitled to the improved rent of such adjoining building, to wit, at L. aforesaid, in the parish and ward aforesaid; by means whereof, and according to the tenor and effect of the said act of parliament in that behalf, he the said Andrew became liable to reimburse and pay to the said Jonathan a certain sum of money, to wit, the sum of two hundred pounds of lawful money of Great Britain, being one moiety of the expence of building so much of the said party wall, so built as aforesaid, as the said Andrew did make use of, after the rate in the said act mentioned, together with a like proportional part of certain other expences which were necessary to the pulling down the said old party wall, amounting in the whole to another large sum of money, to wit, the sum of fifty pounds of like lawful money of Great Britain, and making together with the said sum of two hundred pounds, the sum of two hundred and fifty pounds of like lawful money of Great Britain; and being so liable, he the said Andrew, in consideration thereof, afterwards, to wit, on the day and year aforesaid, at L. aforesaid, in the parish and ward aforesaid, undertook, and faithfully promised the said Jonathan, to pay him the said sum of two hundred and fifty pounds, when he the said A. should be thereto afterwards requested: and although he the said Jonathan, in pursuance of the said act of parliament, did, so soon as conveniently might be after the said party wall was so built as aforesaid, to wit, on the fourteenth day of September, A. D. 1787, at L. aforesaid, in the parish and ward aforesaid, leave at such adjoining building an account in writing of the number of rods in such party wall for which the said Andrew was liable to pay, and of the deduction which he the said Andrew was entitled to make thereout,

thereout, on account of the materials of the old party wall aforesaid, and also on account of such other expences as aforesaid, and did then and thereby demand payment thereof, according to the said act of parliament in that behalf; yet he the said Andrew, not regarding the said act of parliament, nor his said promise and undertaking so by him made in manner and form aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said Jonathan in this behalf, did not, nor would, within twenty-one days next after such demand was made as aforesaid, or at any time afterwards, (although often requested,) reimburse or pay to him the said Jonathan the said sum of two hundred and fifty pounds, or any part thereof, but hath hitherto wholly refused and neglected so to do. And whereas the said A. afterwards, to wit, on, &c. aforesaid, at, &c. aforesaid, was indebted to the said J. in two hundred and fifty pounds of like lawful money of Great Britain, for part of the expence of building a certain party wall before then built by and at the expence of the said Jonathan, agreeably to the directions of the said act of parliament, between certain buildings of him the said Jonathan, situate and being at, &c. aforesaid, and certain other buildings there adjoining thereto, and which said last-mentioned party wall had before then been made use of by the said A. who before, and at the time of building and finishing the same, was the owner of and person entitled to the improved rent of such adjoining buildings, and also for part of certain other expences which were necessary for the pulling down of a certain old party wall between the said several buildings before then pulled down by and at the expence of him the said Jonathan, agreeably to the directions of the said act of parliament; and being so indebted, he the said A. in consideration thereof, afterwards, to wit, on, &c. aforesaid, at, &c. aforesaid, undertook, and then and there faithfully promised the said Jonathan, to pay him the said last-mentioned sum of money, when he the said Andrew should be thereto afterwards requested, &c. [See conclusions, &c. to Declarations.]

ad Count more
general.

BY AND AGAINST PARTICULAR PERSONS.—CARRIERS, &c. (a).

General indebted-
ness assumpsit
for carriage of
goods by land.
Quantum meruit.

(b) FOR the carriage of divers goods, wares, and merchandizes by the said A. B. before that time carried and conveyed in certain waggons, carts, and other carriages of the said A. B. from, &c. to, &c. for the said C. D. at his special instance and request; and being so indebted, &c. And whereas, in consideration that the said A. B. at the special instance and request of the said C. D.

(a) See Attornies, Executors and Administrators, Bankrupts, and their assignees, Corporations, &c. Baron and Feme, &c. &c.

(b) See beginnings and conclusions to Declarations, &c. for all these Counts.

had

ASSUMPSIT GENERAL.—ON DEMORAGE, &c.

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had before that time carried and conveyed divers other goods, &c. of the said C. D. for the said C. D. in certain other waggons of the said A. B. from, &c. to, &c. he the said C. D. undertook, &c. to pay him so much as, &c. and the said A. B. avers that, &c. [For the beginning of and conclusion to these Counts, see beginnings and endings of Declarations under that head.]

FOR the demorage of a certain vessel called a lighter of the said A. B. by him the said defendant retained and used with divers goods and merchandizes on board of the said lighter, on demorage for a long time, to wit, for the space of forty days then next following.

For demorage of a lighter.

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FOR that whereas the said defendant at the time of making the promise and undertaking of the said defendant, hereafter next mentioned, was possessed of divers large quantities of timber, wood, and bark, then lying in the parish of D. in the county aforesaid; and so being thereof possessed, on the first of October, A. D. 1755, at the parish aforesaid, in consideration that the said plaintiff, at the special instance and request of the said defendant, would permit the said defendant by himself and several other persons, with cattle and carriages, to carry and convey the said timber, wood, and bark from the said places where the same so then were, unto, through, over, and along certain closes and parcels of land of the said plaintiff, lying and being in the said parish and county, unto a certain river, called A. otherwise B. river, otherwise the side of B. river, in the said county, he the said defendant undertook, and then and there faithfully promised the said plaintiff, not only to pay him so much money as he the said plaintiff should therefore reasonably deserve to have, but also to render him full satisfaction and amends for all such damage as should be thereby done to the said plaintiff in his said closes and parcels of land. [Averment that plaintiff confiding, &c. did permit, and that the defendant did accordingly fetch, &c. and that the plaintiff reasonably deserved to have other forty pounds, and that in the said carriage, &c. there was damage done to the plaintiff in his closes and parcels of lands to the value of forty shillings, to wit, at the parish aforesaid, whereof the said defendant had notice. Assign a breach for neither paying the forty shillings, nor rendering full nor any other satisfaction or amends for the said damages.] Second Count as the first, only for the damages. Third Count like the first, only for the quantum meruit. Fourth Count indebted in forty pounds for the use and occupation of a certain way or passage for divers cattle, waggons, and other carriages loaded with timber, wood, and bark, in, through, over, and along certain closes of the said plaintiff, lying and being in the parish of, &c. before then had, used, occupied, possessed, and enjoyed by the said defendant, and at his request, by the permission of the said plaintiff, for a long time, to wit, for the space of one hundred days then elapsed; and being so indebted, &c. And whereas, in consideration that the said plaintiff, at the like special instance, &c. of the said defendant,

Special Count for the use of a way to pay so much, &c. and to make amends for damages. See Special Assumpsit, concerning sale, use, &c. of lands.

General indebtedness assumpsit for the use of a way.

Quantum meruit.

dant, had before that time permitted the said defendant, by himself and his servants, and other persons, and with cattle, waggons, and other carriages, to fetch, draw, take, and carry away divers large quantities of timber, wood, and bark, through, over, and along certain other closes and parcels of land of the said plaintiff, lying and being in the parish of, &c. aforesaid, and that the said defendant had accordingly, by the said permission of the said plaintiff, by himself the said defendant, and by his servants, and divers other persons, and with cattle, waggons, and other carriages, fetched, drawn, carried, took, and carried away the said timber, wood, and bark, through, over, and along the said last mentioned closes and parcels of land of the said plaintiff, he the said defendant undertook, &c. to pay him so much as, &c. and the said plaintiff avers that, &c. [See beginnings and endings of Declarations.]

For tonnage.

FOR the tonnage of divers goods, wares, and merchandizes of the said defendant, by him the said defendant before that time navigated, carried, and conveyed upon divers parts of a certain navigable cut or canal, navigable and passable from the river Trent to the river Mersey, in certain boats, barges, and other vessels, for the said defendant, and at his special instance and request; and being so indebted, &c. And whereas, in consideration that the said plaintiff had before that time, at the like special instance and request of him the said defendant, navigated, carried, and conveyed divers other goods, wares, and merchandizes of him the said defendant, upon divers parts of the said cut or canal, in certain other boats, &c. for him the said defendant, he the said defendant undertook, &c. to pay him the said plaintiff so much money as he reasonably deserved to have for the tonnage thereof, when he the said defendant should be thereto afterwards requested; and the said plaintiff avers that he, &c. [See beginnings of and conclusions to Declarations.]

For a crop of
sheep-cabbage.

FOR a certain crop of sheep-cabbage of the said plaintiff, before that time growing and being in a certain close of the said plaintiff, and sold by him the said plaintiff to the said defendant, and by him the said defendant, according to that sale, gathered, taken, had, and received, and at his special instance and request; and being so indebted, &c. [See beginnings and conclusions, &c.] And whereas, in consideration that the said plaintiff, at the like special instance, &c. of the said defendant, had before that time sold to the said defendant a certain other crop of sheep-cabbage of the said plaintiff, then growing and being in a certain other close of him the said plaintiff, and that the said defendant had, according to that sale, gathered, took, had, and received the same, he the said defendant undertook, &c. to pay him so much, as, &c.; and the said plaintiff avers that, &c. Add indebitatus assumpsit and quantum meruit for the agistment of cattle, and indebitatus assumpsit and quantum meruit for the use and occupation of ten acres

of

ASSUMPSIT GENERAL.—FOR SEXTON'S FEES, &c.

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of land, sown with sheep-cabbage, and indebitatus assumpsit and quantum meruit for goods sold and delivered. [For these Counts see Morgan's Va. Me. Impey's Mod. Pl. and Richardson's Practice in B. R. and C. B.]

FOR that whereas the said plaintiff, on, &c. and for a long time, to wit, for the space of three years then elapsed, was, and from thence hitherto hath been, and still is, sexton of the parish of, &c. and as such sexton of the said parish during all the time aforesaid was, and still is, entitled to have, take, and receive all and singular the fees due and of right payable to the sexton of the said parish church on the burial and interment of the corpse of every person from time to time during the time aforesaid buried and interred in the said parish church of, &c. and in the church-yard of the said parish, or in either of them; and whereas the said defendant, whilst he the said plaintiff so was sexton of the said parish as aforesaid, to wit, on, &c. aforesaid, at the parish aforesaid, was indebted to the said plaintiff in the sum of forty shillings for his fees before then due and of right payable to him the said plaintiff, as sexton of the said parish, on the burial and interment of the corpse of one A. B. before then, and during the time that the said plaintiff was so sexton of the said parish, buried and interred in the church-yard of the said parish; and being so indebted, &c. Indebitatus assumpsit and quantum meruit for work and labour. [See Morgan's Va. Me.]

For the fees of a sexton for burial.

FOR divers cattle before then sold to the said defendant, and by virtue of that sale delivered to one A. G. at the special instance and request of the said defendant, and for divers other cattle, &c. before then sold, &c. to the said defendant, and by virtue of that sale delivered to one J. C. at the like special instance, &c. of the said defendant, and for divers other, &c. &c. Quantum meruit accordingly; for which see Morg. &c. and beginnings and endings under that head.

For cattle sold to defendant, and delivered to several other persons at defendant's request

FOR that whereas the said defendant, on, &c. at, &c. as husband of a certain ship called the Ranger, was indebted to the said plaintiff in one hundred pounds of lawful, &c. for the work and labour, &c. of the said plaintiff, by the said plaintiff before that time done and performed by himself and his servants, in and about the repairing and fitting out the said ship, whereof the said defendant so was husband, at the special instance, &c. of the said defendant, and on his retainer, and for divers materials and other necessary things used and applied in and about that work and labour, before then found and provided by the said plaintiff, at the like special instance, &c. of the said defendant; and being so indebted, &c. And whereas, in consideration that the said plaintiff, at the like special instance, &c.

General indebtedness assumed against the husband of a ship for repairing the same.

Quantum meruit.

ASSUMPSIT GENERAL.—FOR SALVAGE OF SHIPS.

&c. of the said defendant, as husband of the said ship, and on his retainer, had before that time done and performed other his work and labour by himself and his servants, in and about the repairing and fitting out of the said ship, whereof the said defendant so was husband, and had found and provided divers other materials and necessary things used and applied in and about that work and labour, he the said defendant undertook, &c. to pay him so much as, &c. ; and the said plaintiff avers that, &c.

For a passage
from Jamaica to
London.

Quantum meruit.

FOR the carrying, transporting, and conveying of the said defendant from parts beyond the seas, to wit, from Jamaica in the West Indies to London, in a certain ship or vessel called the Wilkes and Liberty, whereof the said plaintiff was then and there the master and commander, at the special instance and request, &c. ; and being so indebted, &c. And whereas, in consideration that the said plaintiff, at the like special instance and request of the said defendant, had before that time carried, transported, and conveyed, &c. &c. he the said defendant undertook, &c. &c. to pay him so much money as, &c. ; and the said plaintiff avers that, &c.

Third and fourth counts, for meat, drink, lodging, &c.

Fifth and sixth counts, work and labour by himself and his servants.

Seventh and eighth counts, goods sold and delivered.

Ninth and tenth counts, money laid out ; account stated ; and common conclusion.

For these Counts see Morgan's V. M. and beginnings and endings, &c. of Declarations, &c. in this work.

- *Indebitatus assumpsit* against the collector of customs for salvage, with Mr. Serjeant Boddie's Opinion.

FOR that whereas, on eighth December, A. D. 1744, a certain ship, called the Lonsdale of Whitehaven, whereof one Richard Bevan was then master, and then loaded with divers goods and merchandizes, was forced on shore and stranded on the sea-coast of this kingdom, at or near a certain place called End Fost, in the parish of St. Bees, within the jurisdiction of the port of Whitehaven, in the county of Cumberland ; and the said defendant then was, and still is, the collector of his majesty's customs in the port of Whitehaven : and whereas the said defendant, as collector of the customs aforesaid, on the first May 1746, at the parish of, &c. aforesaid, in the county aforesaid, was indebted to the said plaintiff in three hundred and thirty-six pounds six shillings of right due and payable by the said defendant, as collector of the customs aforesaid, to the said plaintiff, for the work and labour, care and diligence, of the said plaintiff, before that time done and performed by the said plaintiff in the salvage of the said cargo wherewith the said ship, so forced on shore and stranded as aforesaid, at the time of her being so forced on shore and stranded as aforesaid, was laden, and in the custody of the said defendant as collector of the customs.

as aforesaid, and for money by the said plaintiff in that behalf paid, laid out, and expended; which said sum of three hundred and thirty-six pounds six shillings was, after the salvage of the said cargo, allotted and adjudged (a) by Richard Cook, Peter How, and John Bean, esquires, then justices of our lord the now king to keep his majesty's peace in the said county of Cumberland, being neighbouring justices to the said place where the said ship was so forced on shore and stranded as aforesaid, named by the said plaintiff and by the said defendant in that behalf, as a reasonable reward to be paid to the said plaintiff by the said defendant, as collector of the customs aforesaid, for his service in that behalf, by force of and according to the form and effect of the statute in this case lately made and provided. And whereas the said defendant afterwards, to wit, on the first of May 1746 aforesaid, at the parish aforesaid, as collector of the customs aforesaid, was indebted to the said plaintiff in five hundred and fifty-nine pounds six shillings and ninepence for other work and labour, care and diligence, of the said plaintiff, before then done and performed by him, at the instance and request of the said defendant, as collector of the customs aforesaid, in and about the salvage of the cargo wherewith the said ship, so forced on shore and stranded as aforesaid, at the time of her being so forced on shore and stranded as aforesaid, was laden, and for money by the said plaintiff (b), at the like special instance and request of the said defendant, as collector of the customs as aforesaid, in that behalf expended, laid out, and paid; and being so indebted, &c. And whereas afterwards, to wit, on the same day and year last aforesaid, at the parish aforesaid, in consideration that the said plaintiff, at the like special instance and request of the said defendant, as collector of the customs aforesaid, had before that time done, performed and bestowed other his work and labour, care and diligence, in and about the salvage of the cargo wherewith the said ship, so forced on shore and stranded as aforesaid, was laden, he the said defendant undertook, &c. to pay him the said plaintiff so much money as, &c.; and the said plaintiff avers that, &c. And whereas also the said defendant, as collector of the customs aforesaid, afterwards, to wit, on the same day and year last aforesaid, at the parish aforesaid, was indebted to the said plaintiff in other five hundred and eighty-nine pounds six shillings and ninepence, for money by the said plaintiff before that time laid out and expended, and paid for the said defendant, and at his like special instance and request, in and about the salvage of the cargo wherewith the said ship, so forced on shore and stranded as aforesaid, at the time of her being so forced on shore and stranded as aforesaid, was loaded, and also for money by the said defendant before that time had and received to the use of the said plaintiff; and being so

The sum allotted and adjudged by the justices.

2d Count, for work and labour.

12. Anne, st. 2.
c. 18. §. 2.

Quantum meruit.

3d Count, Money laid out and expended.

(a) The justices in their adjudication do not say that the money shall be paid by the collector, nor does the act say any such thing. The act says, it shall be paid by the owners of the cargo. Now

the plaintiff in this case was the owner of the ship and cargo; and this makes the difficulty of the action.

(b) *Quære*, If plaintiff has at any time claimed the cargo as owner?

indebted,

ASSUMPSIT GENERAL.—FOR PORTER'S FEES, &c.

indebted, &c. (Counts for work and labour generally, and a Count for money laid out, &c. Damages 500l.)

Qu. If the owner did not make his claim, but came in as a salver, if he could not recover the sum insured?

The plaintiff is the owner of the goods; and if he made his claim to them, it is he, and not the collector, that is liable to pay the salvage by the act. And I conceive the meaning of the act is, if there is any dispute between the owner and the officer as a salver, then the justices to adjudge the quantum; so that this adjudication of the justices seems not to be in pursuance of the act. As the plaintiff, who is owner, claims the salvage, if the owner does not make his claim within

twelve months, then public sale is to be made of the goods. This sale I apprehend the collector is to make, and to pay all costs of salvage. Now it does not appear to me whether the plaintiff has made his claim to the goods, or has entirely waived it, and the collector has proceeded to sale. I should apprehend the collector is the person who is to pay the salvage within the meaning of the act. There are difficulties that occur to me; there wants a further explanation of the facts; and I cannot but say the plaintiff's success in this action is very doubtful.

ED. BOOTES.

For fees, &c.
as packer's por-
ter of aliens
goods in Lon-
don.

WHEREAS the said plaintiff, on the first day of November, A. D. 1780, and before, was, and continually from thence hitherto hath been, and still is, lawfully possessed of and in the office or place of packer's porter or portage of aliens goods within the city of London, and the liberties thereof, with all the duties, fees, profits, perquisites, and advantages thereunto due and of right belonging and appertaining; and by reason thereof, he the said plaintiff, during all the time aforesaid, was lawfully entitled to have, and of right ought to have had, the landing of all goods belonging to any alien or aliens, imported from any place or places in foreign parts beyond the seas into the port of London, in any ship or vessel whatsoever, and to have and receive of and from the importer thereof, for the landing of such goods, certain fees, duties, profits, and advantages due and of right accustomed and belonging to the said office (A); that is to say, the sum of fourpence for every bale of such goods so landed, to wit, at London aforesaid, in the parish of, &c.; and the said plaintiff so being possessed of and in the said place or office in form aforesaid, he the said defendant, during the time aforesaid, to wit, on, &c. imported from abroad in foreign parts beyond the seas, to wit, from L'Orient, into the port of London, certain goods, to wit, (*the quantity*) belonging to a certain alien or certain aliens to the said plaintiff unknown, in a certain ship or vessel called the *Patty*, to wit, at London aforesaid; and the said plaintiff then and there, in his said place or office of packer's porter or portage of aliens goods within the city of London and liberties, had the landing of the said goods for the said defendant; and accordingly, by himself and his deputies and servants, as such officers, landed the said goods for the said defendant, whereby the said defendant then and there became liable to pay, and ought to have paid, to the said plaintiff, the sum of one hundred pounds, being at and after the rate of fourpence for every bale of the said goods so imported by the said defendant as aforesaid, and so landed by the said defendant

as aforesaid; whereof the said defendant then and there had notice; and being so indebted, &c. (Second Count as the first to the letter A. then proceed as follows): And whereas the said defendant, on the day and year last aforesaid; at, &c. was indebted to the said plaintiff, as such officer as aforesaid, in the further sum of forty pounds, of lawful, &c. for his fees due and of right belonging and payable from the said defendant, *for his landing* of certain goods, to wit, cloth belonging to a certain alien or certain aliens to the said plaintiff unknown, by the said defendant before then imported from abroad and beyond the seas, to wit, from L'Orient into the port of London, in a certain ship or vessel, and there landed by the said plaintiff in his said place or office for the said defendant; and being so indebted, &c. [See beginnings and endings of Declarations postea.]

FOR certain fees and sums of money before that time due and owing, and of right payable from the said defendant to the said plaintiff, as (a) clerk of the crown in the county palatine of Lancaster, for entering and recording divers proceedings in several suits and prosecutions heretofore depending against the said defendant, on divers informations exhibited against the said defendant, at the general sessions of assizes held in the said county of Lancaster, for certain offences therein alleged to have been committed by the said defendant, and which proceedings were entered and recorded by the said plaintiff, in his said office of clerk of the crown in the aforesaid county-palatine of Lancaster, at the instance and request of the said defendant; and being so indebted, &c. And whereas, in consideration that the said plaintiff had before that time, in his aforesaid office of clerk of the crown, at the special instance and request of the said defendant, entered and recorded divers proceedings in several other prosecutions heretofore depending against the said defendant, at the general sessions and assizes held in the said county palatine of Lancaster, for certain offences therein alleged to have been committed by the said defendant, he the said defendant undertook, &c. to pay him so much, &c.; and the said plaintiff avers that, &c. [See beginnings and endings postea.]

For fees as clerk of the crown of the county-palatine of Lancaster, where defendants were discharged on nolle prosequi.

Quantum meruit.

(a) The necessary proofs for the plaintiff are, 1st, the patent by which he holds his office; 2d, the records of *nolle prosequi*; 3d, the application of defend-

ant for *those nolle prosequi's (if possible)*; 4th, the usage of receiving the fees in question.

FOR money by the said plaintiff before that time laid out, expended, and paid for the said defendant as the proctor of the said defendant, and upon his retainer, in prosecuting an appeal from a sentence pronounced by the arches court of the court of Canterbury, to the high court of delegates, to wit, at London aforesaid, in the parish and ward aforesaid, and for his fees, labour, care, and

For fees, &c. as a proctor, for prosecuting an appeal to the high court of delegates.

attendances in prosecuting the same, and also for the work and labour, care and diligence of the said plaintiff before that time done, performed, and bestowed in and about other the business of the said defendant, and for the said defendant, and at his special instance and request; and being so indebted, &c. And whereas, in consideration that the said plaintiff, at the like special instance, &c. of the said defendant, and upon his retainer, had before that time laid out and expended divers other sums of money, in and about the prosecuting of a certain other appeal from a sentence pronounced by the arches court of the said court of Canterbury to the said high court of delegates, and had also, at the like special instance and request of the said defendant, done, performed, and bestowed other his work and labour, care and diligence, as such proctor of the said defendant, in and about other the business of the said defendant, and for the said defendant, he the said defendant undertook and faithfully promised the said plaintiff to pay him all such money as he had so laid out and expended, and also so much money as he for his fees, labour, care, and diligence in the said several last-mentioned particulars therefore reasonably deserved to have, when he the said defendant should be thereto afterwards requested: and the said plaintiff avers, that he so laid out and expended, on the several occasions last aforesaid, a large sum of money, to wit, the sum of forty pounds of lawful, &c. and that he reasonably deserved to have of the said defendant the further sum of twenty pounds of like lawful money, for his fees, labour, care, and diligence in the said several last mentioned particulars, to wit, at, &c. aforesaid. [See beginnings and endings, &c. postea.]

For fees as a proctor for entering caveats.

FOR causing caveats to be entered in the prerogative court of Canterbury, the consistory court of Bath and Wells, within this kingdom, to letters of administration to be granted of the goods, rights, and credits of J. W. his then deceased father, by the order and at the special instance and request of the said defendant, and for several sums of money laid out and expended by him the said plaintiff, at the like special instance, &c. of the said defendant before that time; and also for applying before that time to prevent letters of administration of the goods, rights, and credits of the said J. W. to be granted to the then widow and relict of him the said J. W. without him the said defendant being joined with her as administrator of the said goods, rights, and credits, in and by any letters of administration to be then granted thereof; and for divers sums of money at the like special instance, &c. of the said defendant, before that time laid out, expended, and paid for the said defendant by the said plaintiff, and also for divers journies and attendances of the said plaintiff for and upon the said defendant, and at his like special instance, &c. by the said plaintiff before that time done and performed; and being so indebted, &c. And whereas, in consideration that the said plaintiff, at the like special instance, &c. of the said defendant, had before that time caused other

other caveats to be entered in the prerogative court of Canterbury, and the consistory court of Bath and Wells, to letters of administration to be granted of the goods, rights, and credits of the said J. W. and had done and performed other journies, attendances, care, work, and labour for the said defendant, and at his like special instance, &c. and had also laid out and expended for the said defendant, and at his request, divers other sums of money, and had applied to prevent the said last mentioned letters of administration to be granted of the goods, rights, and credits of the said J. W. to the then widow and relict of the said J. W. without him the said defendant being joined with her as administrator of the same goods, rights, and credits, by any letters of administration then to be granted, he the said defendant undertook, &c. to pay him not only as much money as he the said plaintiff, for and about the said caveats, attendances, journies, care, work, and labour, reasonably deserved to have, but also as much money as the said plaintiff, in and about the same caveats, journies, attendances, care, work, and labour, had expended and laid out, when he the said defendant should be thereto afterwards requested: and the said plaintiff in fact saith, that for and about the said caveats, journies, attendances, care, work, and labour, he reasonably deserved to have the further sum of ten pounds of lawful, &c. to wit, at, &c. aforesaid; and that in and about the caveats, journies, attendances, and work and labour last mentioned, he the said plaintiff paid, laid out, and expended, the further sum of ten pounds of like lawful, &c. to wit, at, &c. aforesaid; of all which said premises the said defendant then and there had notice.

FOR certain premiums of insurance before that time and then due and payable from the said defendant to the said plaintiff, for and in respect of his having, at the special instance and request of the said defendant, before that time in due manner insured certain sums of money for the said defendant, upon divers goods, wares, and merchandizes of the said defendant, before then laden and put on board of certain ships and vessels; and being so indebted, &c. Assumpsit accordingly. [See beginnings, &c. post.]

AND whereas the said defendant afterwards, to wit, on the same day and year aforesaid, at Westminster aforesaid, in the county aforesaid, was indebted to the said plaintiffs in (either) one hundred pounds of like lawful money, for certain commission and reward then and there due and payable from the said defendant to the said plaintiffs, for and on the negotiation of divers large sums of money before that time effected, negotiated, and completed by the said plaintiffs, as the agents of the said defendants in that particular, and after their services in and about the business of the said defendant, and for the said defendant, and at his like special instance and request; and being so indebted, he the said defendant,

A count in a declaration for commission on negotiating money, and on agency.

ASSUMPSIT.—BY AND AGAINST PARTICULAR PERSONS.

in consideration thereof, afterwards, to wit, on the day and year aforesaid, at Westminster aforesaid, in the county aforesaid, undertook, and then and there faithfully promised the said plaintiffs, to pay them the said *last-mentioned* sum of money, when he the said defendant should be thereto afterwards requested. [See beginnings and endings of Declarations.]

If only one Count, omit the words in *italic* in this and the next Count.

Count in *indebitatus assumpsit* for interest for money lent.

AND whereas the said defendant was indebted to the said plaintiff in *other* ten pounds of *like* lawful, &c. for lawful interest at the rate of five pounds per cent per annum, before that time due, owing and payable by the said defendant to the said plaintiff, upon certain sums of money by the said plaintiff before that time lent and advanced to and for the said defendant, and at his special instance, &c. and upon certain other sums of money before that time had and received by the said defendant to the use of the said plaintiff; and being so indebted, &c.

Some doubts have been entertained of Counts, it is proper to risk it. V. LAWES, the goodness of the Count, but as I cannot see much weight in the objections to Mr. Justice Buller, in deciding a case it, and as it may be a question whether in the court of King's Bench in Hilary the subject matter of it may be given in Term, said that this Count could not be evidence under any of the common maintained.

Indebitatus assumpsit in C. B. for a parcel of tea, with an allowance of a discount upon prompt payment.

Tea sold, 1st Count.

2d Count, for the discount.

LONDON, *ss.* William Sandys, late of London, tea-merchant, and Peter Berry, late of West Smithfield, in the county of Middlesex, grocer, were attached to answer to William Hoppes of a plea of trespass on the case; and thereupon the said William Hoppes, by Matthew Robinson his attorney, declares, that whereas the said William Sandys and Peter Berry, on the twenty-third day of June 1741, at London, to wit, at the parish of St. Mary le Bow, in the ward of Cheap, were indebted to the said William Hoppes in one thousand and forty-six pounds ten shillings and nine pence of lawful money of Great Britain, for two thousand nine hundred and ninety pounds weight and one quarter of a pound weight of tea before that time sold by the said William Hoppes to the said William Sandys and Peter Berry, at their special instance and request; and being so indebted for the same, they the said William Sandys and Peter B. in consideration thereof, afterwards, to wit, on the day and year aforesaid, at London, &c. undertook, and then and there faithfully promised the said William Hoppes, to pay him the said one thousand and forty-six pounds ten shillings and nine-pence, when they should be thereto required. And whereas also the said W. H. afterwards, to wit, on the same day and year, at London, &c. had, at the special instance and request of the said W. S. and P. B. sold to the said W. S. and P. B. four lots of other tea, containing in the whole two thousand and ninety pounds weight and one quarter of a pound weight

weight of tea, at the rate of seven shillings for every pound weight of tea, and so in proportion the same for the lesser quantity, amounting in the whole to the sum of one thousand and forty-six pounds eleven shillings and nine pence of lawful money, to be paid to the said W. H. by the said W. S. and P. B. of which one shilling, part thereof, was then and there in hand paid to the said W. H. by the said W. H. then and there agreeing to allow to the said W. S. and P. B. a discount of six pounds ten shillings by the hundred pounds out of the said sum for prompt payment, amounting in the whole to sixty-eight pounds and two pence, if the said W. S. and P. B. should pay the said W. H. nine hundred and seventy-eight pounds ten shillings and seven pence of like lawful money, before the twenty-third day of March then next ensuing: the said W. S. and P. B. in consideration thereof, afterwards, to wit, on the said twenty-third day of January in the year aforesaid, at London, &c. undertook, and then and there faithfully promised the said W. H. to pay him the said nine hundred and seventy-eight pounds ten shillings and seven pence of like lawful money before the twenty-third day of March then next ensuing; and in case that they the said William Sandys and P. B. should not pay the said William Hoppes the said nine hundred and seventy-eight pounds ten shillings and nine pence before the said twenty-third day of March then next ensuing, that then they the said William S. and P. B. would, after the said twenty-third day of March, pay to the said William H. the said one thousand and forty-six pounds ten shillings and nine pence of like lawful money, residue of the said one thousand and forty-six pounds eleven shillings and nine pence, when they should be thereto required. And whereas also the said W. S. and P. B. afterwards, to wit, the day and year aforesaid, at London, &c. accounted with the said W. H. of and concerning divers sums of money before that time due and owing by the said W. S. and P. B. and then in arrear to the said W. H. and on that account the said W. S. and P. B. were then found in arrear to the said W. H. in the other sum of one thousand and forty-six pounds ten shillings and nine pence of like lawful money; and being so in arrear, the said W. S. and P. B. in consideration thereof, afterwards, to wit, on the day and year aforesaid, at London, &c. undertook, and then and there faithfully promised the said W. H. to pay him the said last mentioned one thousand and forty-six pounds ten shillings and nine pence, when they should thereto be required: yet, &c. [See conclusions to Declarations post.]

Account stated.

Breach.

J. B. complains of J. A. for that whereas one A. A. in her lifetime, now deceased, before and on the seventeenth day of September, A. D. 1783, at Westminster, in the county of Middlesex, was seised in his demesne as of fee of and in the several messuages or tenements, farms, lands, and premises hereinafter mentioned; and being so thereof seised, she the said A. A. in her life-time, to wit,

Declaration in
indebitatus as-
sumpsit for ar-
rears of an an-
nuity charged
by will upon
testator's free-
hold estates, and
devised to de-
fendant.

on, &c. at, &c. duly made and published her last will and testament, and thereby (amongst other things) then and there gave and bequeathed all those several messuages, tenements, and farms, called Brick-house farm and East-field farm, with the several lands, closes, parcels of ground, and hereditaments and premises, with the appurtenances, situate, standing, lying, and being at S. in the north riding of the county of York, then in the several occupations of J. B. and R. A. together with the tithe-corn and other tithes growing or arising upon or without the two said several farms, or any modus for the same, and all other the real estates, of whatsoever nature or tenure soever the same might be, lying or being in the several counties of York, Durham, or either of them, unto and to the use of the said James and his assigns, for and during the term of his natural life, without impeachment of waste; and the said A. A. in her life-time then and there gave unto the said John one annuity or yearly sum of fifty pounds, for and during the term of his natural life; which said annuity the said A. A. in her life-time thereby then and there willed and directed should be paid by half-yearly payments, that is to say, on the twenty-ninth day of September and the twenty-fifth day of March, and directed the first payment thereof to begin and be made at such of the said two several days as should first happen next after her decease, and to be paid out of the rents and profits of the said freehold messuages, lands, farms, and tenements lying and being at S. aforesaid: and the said John in fact saith, that the said Ann A. being so seised of the said several messuages or tenements, farms, lands, and premises, afterwards, on the fourteenth day of November, A. D. 1785, at Westminster aforesaid, in the county aforesaid, died so seised thereof, without revoking or altering her said will; after whose death, to wit, on, &c. the said James entered into and upon all and singular the said messuages or tenements, farms, lands, and premises, and became and was, and from thence hitherto hath been, and still is, thereof seised for the term of his natural life, to wit, at, &c. aforesaid: and the said John in fact further saith, that after the death of the said Ann A. to wit, on the twelfth day of May, A. D. 1789, at, &c. aforesaid, a large sum of money, to wit, the sum of one hundred and twenty-five pounds of lawful, &c. of the said annuity or yearly sum of fifty pounds for two years and one half of another year then elapsed, became and was due and payable from the said James to the said John, whereof the said James then and there had notice; and by means of the several premises aforesaid, he the said James then and there became liable to pay to the said John the said sum of one hundred and twenty-five pounds, when he the said James should be thereto afterwards requested. And whereas the said James afterwards, to wit, on the second day of November, A. D. 1785 aforesaid, at, &c. aforesaid, was indebted unto the said John in the sum of one hundred and fifty pounds of lawful, &c. for money by the said James before that time had and received to the use of the said John; and being

so indebted; &c. (add common conclusions.) [See beginnings and conclusions to Declarations post.] to the damage of the said John of one hundred and fifty pounds; and thereupon he brings his suit, &c. Pledges, &c. See 2. Salk. 415. 3. Salk. 227. 415. 1. Sid. 46. Ld. Raym. 934. 6. Mod. 25, 26.

PALACE COURT, to wit. Thomas Blundell, by Edward Lawes his attorney, complains against Robert King, Robert Auberry, William Wintlett, and William Wood, in a plea of trespass on the case, &c. for that whereas the said defendants heretofore, to wit, on the first day of November, in the year of Our Lord 1791; at Southwark; in the county of Surrey, and within the jurisdiction of this court, were indebted to the said Thomas in twenty pounds of lawful money of Great Britain, for money by the said defendants before that time there had and received to and for the use of the said plaintiff; and being so indebted, they the said defendants, in consideration thereof, afterwards, to wit, on the day and year aforesaid, at Southwark aforesaid, in the county and jurisdiction aforesaid, undertook, and then and there faithfully promised the said plaintiff, to pay him the said sum of money, when they the said defendants should be thereto afterwards requested; yet the said defendants, not regarding their said promise and undertaking so by them made as aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said plaintiff in this behalf, have not, nor have any of them as yet paid the said sum of money, or any part thereof, to the said plaintiff, (although so to do the said defendants were requested by the said plaintiff afterwards, to wit, on the day and year aforesaid, and often afterwards, to wit, at S. aforesaid, in the county and jurisdiction aforesaid,) but they so to do have respectively hitherto wholly refused, and still do refuse, to the damage of the said plaintiff of ninety-nine shillings; and therefore he brings his suit, &c.: and the said Thomas avers, that neither he nor the said defendants were, nor was any or either of them, at the time of the levying of the plaint of the said plaintiff here in court, nor are they, nor is either or any of them, now of the king's household. Pledges, &c.

Declaration in *indebitatus assumpsit* in the marshall's court, for money had and received by a member of an amicable society of tradesmen, against the stewards for his allowance as sick member; and Opinion how far the action can be supported.

I Think there is a clear objection to this action, if the defendants should take it at the trial; and that is, that all the members of the society are made partners by the articles, by which each is individually entitled to the whole fund, not in shares, but in entireties; of course, no one can maintain an action against another for any separate part of such fund. In the case of *Holliday against Camwell and White*, 1. T. Rep. 658. where trover was brought against one of the defendants, a member of the club, who had got possession of the club-box, and delivered it to the other, not a member, the plaintiff was non-suited upon this

distinction. In a similar case to the present, an action for money had and received was at issue before Lord Mansfield, and he refused to try it for the same reason; and added, that the Court would not make itself visitor-general to all the clubs in the kingdom. Perhaps in the marshall's the objection may not be taken; I have therefore declared for money had and received, under which form of action the right may be tried, either to recover plaintiff's allowance under the articles, or at least his subscription back again on his being struck off.

T^{mo}. BARROW.

Declaration in
county court of
Lancaster, in
indebitatus
assumpsit, for the
use of plaintiff's
bull in bulling
defendant's
cows.

LANCASHIRE, *ff*. That whereas the said Thomas, on the first day of October, in the year of Our Lord 1774, at P. in the said county, and within the jurisdiction, &c. was indebted to the said John in thirty-nine shillings of lawful money of Great Britain, for the use of a certain bull of the said J. then before that time had and used by the said Thomas, by the permission of the said John, at the special instance and request of the said Thomas, in the covering and bulling of certain cows of the said Thomas; and being so indebted, the said Thomas, in consideration thereof, afterwards, to wit, &c. (common Assumpsit.) And where-

Quantum meruit.

also the said Thomas afterwards, to wit, on the same day and year last mentioned, at P. afore said, and within, &c. in consideration that the said J. at the special instance and request of the said Thomas, had before that time permitted the said Thomas to use a certain other bull of the said J. in covering and bulling certain other cows of the said T. and by the permission of the said J. the said bull of the said J. had then before that time covered and bulled the said cows of the said Thomas, he the said Thomas undertook, and then and there faithfully promised, to pay the said J. so much money as he reasonably deserved to have for the same, when he should be thereto afterwards requested; and the said J. in fact saith, that he reasonably deserved to have for the same other thirty-nine shillings of like lawful money, to wit, at Preston afore said, and within, &c. whereof the said T. then and there had notice; nevertheless, &c. [See beginnings and conclusions to Declarations.] J. WALLACE.

Declaration in
assumpsit against
baron and feme
of the last will and testament of William M'Keand deceased, be-
sued as executor
and executrix,
where the feme
being widow of
the intestate, is
only liable as executrix de son tort.

LANCASHIRE, to wit. Robert Tate complains of Mat-
thew Crompton and Nancy, otherwise Anne, his wife, executrix
of the last will and testament of William M'Keand deceased, be-
ing, &c. for that whereas the said William M'Keand heretofore,
in his life-time; to wit, on, &c. at, &c. was indebted, &c. (for
goods sold and delivered, and common money Counts.)

Plea.

And the said Matthew and Nancy, otherwise Anne, by Joseph Allen their attorney, come and defend the wrong and injury when, &c. and say, that the said Robert ought not to have or maintain his afore said action thereof against them; because they say, that they are not, nor ever were, executor and executrix of the last will and testament of the said William deceased, nor ever administered any goods or chattels which were of the said William at the time of his death, as executor and executrix of the last will and testament of the said William deceased; and this they are ready to verify; wherefore they pray judgment if the said Robert ought to have so maintained his afore said action thereof against them, &c. And for further plea, &c. (ad plea plene administravit.) GEO. WOOD.

Replication

And the said Robert, as to the said plea of the said Matthew and Nancy by them first above pleaded in bar, says, that he the said Robert ought not, by reason of any thing in that plea alleged, to be barred from having and maintaining his afore said action thereof against

against the said Matthew and Nancy, because he says that the said Nancy, at the time of the exhibiting of the bill of the said Robert, was, and from thence hitherto hath been, and still is, executrix of the last will and testament of the said William deceased, and hath administered divers goods and chattels which were of the said William at the time of his death, as executrix of the last will and testament of the said William, to wit, at P. aforesaid, in the county aforesaid; and this the said Robert prays may be inquired of by the country. And the said Robert, as to the said plea of the said Matthew and N. by them lastly above pleaded in bar, says, that inasmuch as he the said Robert cannot deny the several matters therein contained, but admits the same to be true, and inasmuch as the said M. and N. have in and by their said plea admitted the said several promises of the said William M'Keand in the said declaration mentioned, he the said Robert prays judgment, and his damages by him sustained by reason of the non-performance of the said several promises and undertakings in the said declaration mentioned, to be adjudged to him of the goods and chattels of the said William deceased at the time of his death, and which shall hereafter come to the hands of the said N. to be administered.

praying judgment of assets in future.

THO. BARROW.

I have replied to the defendants' pleas as desired, but I must own I cannot help entertaining serious doubts of the plaintiff's case in its present form.

It does not appear to me to have been well considered when the suit was instituted, whether the defendant Matthew C. might not have been sued alone without his wife, as executor de son tort. I have desired to see the instructions for declaration, but they do not state with sufficient precision whether the husband, after marrying M'Keand, the intestate's widow, intermeddled with his assets and paid debts, or whether such intermeddling was by his wife during her widowhood. If evidence can be shown of the husband's intermeddling, I think he ought to have been sued alone; and if his wife only

intermeddled before she married, it seems to me, that though such intermeddling might be a sufficient reason for charging her in an action, yet this action is improperly conceived. In the former case, the husband ought to be sued alone without the wife; in the latter, if the husband must be sued for conformity, he ought not to be named executor.

Under these circumstances, I advise to ascertain the real facts of the case, and as they appear to be, try the effect of a summons before a judge to amend the declaration if it can be done, otherwise the plaintiff must begin *de novo*.

THOMAS BARROW.

1. Roll. Abr. 660. 665. l. 37. Com. Dig. Baron and Feme (2.)

AND whereas afterwards, to wit, on the day of in the year 1774, at Maidstone in the county of K. in consideration that the said Michael, at the special instance and request of the said Henry, had lent and delivered to the said Henry a certain cock of him the said Michael, to be kept and used by the said Henry, for so long a time as he the said Michael should please, he the said Henry undertook, and then and there faithfully promised the said Michael, to deliver the said last mentioned cock back again to him the said Michael, whenever he the said Henry should be thereunto requested; and the said Michael avers, that he afterwards, to wit, on the

Declaration in *indebitatus assumpsit* general, for game-cocks lent to hire.

Second Count,
other game
cocks.

the first day of January, in the year of Our Lord 1776; did request the said Henry to deliver the said cock back again to him the said Michael, according to his said promise, to wit, at Maidstone aforesaid, in the county aforesaid; yet the said Henry, not regarding his said promise and undertaking so made as aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said Michael in this behalf, did not, when he was so thereunto requested as aforesaid, deliver back to the said Michael the said cock so lent and delivered as aforesaid; but to do this he the said Henry then and there, and always hitherto hath, wholly refused, and still refuses. And whereas also, the said Henry afterwards, to wit, on the same day and year last aforesaid, at M. aforesaid, in the county aforesaid, was indebted to the said Michael in the sum of ten pounds, for the use and hire of certain game cocks of him the said Michael, before that time let to hire by the said Michael to the said Henry, at his special instance and request, and by the said Henry accordingly kept and used for a long space of time, to wit, for the space of two whole years then elapsed; and being so indebted, he the said Henry, in consideration thereof, afterwards, to wit, on the day and year last aforesaid; at M. aforesaid, in the county aforesaid, undertook, and then and there faithfully promised the said Michael to pay him the said last mentioned sum of money, when he the said Henry should be thereunto requested.

Quantum meruit.

And whereas afterwards, to wit, on the same day and year last aforesaid, at M. aforesaid, in the county aforesaid, in consideration that the said Michael had before that time, at the like special instance and request of the said Henry, let to hire to the said Henry divers other game cocks of the said Michael, and the said Henry, according to that letting, had kept and used the said last mentioned game cocks for a long time, to wit, for the space of other two whole years then elapsed he the said H. undertook, and then and there faithfully promised the said M. to pay him so much money as he therefore reasonably deserved to have, when he the said H. should be thereunto requested: and the said Michael avers that he therefore reasonably deserved to have other ten pounds of like lawful money, to wit, at Maidstone aforesaid, in the county aforesaid, when he the said Henry afterwards, to wit, on the same day and year last aforesaid, there had notice. (Counts for money laid out and expended, lent and advanced, had and received; common conclusion.)

GEO. WOOD.

General indult.
tunc *offensive*
by an attorney
against a pri-
soner in custody
of the sheriff, for
business done in
B. R. Suits car-
ried on.

CUMBERLAND, ff. John King, gentleman, one of the attornies of the court of the lord the king, before the king himself, according to the liberties and privileges of the same court, used and approved of in the same from time whereof the memory of man is not to the contrary, present here in court in his proper person, complains against John Swalbrick, in the custody of the sheriff of the said county of Cumberland; by virtue of his majesty's writ of attachment of privilege issuing out of the court of the said

said

said lord the king, before the king himself at Westminster, against the said John Swalbrick, at the suit of the said John King; for that whereas the said J. S. on the twenty-fifth of June, A. D. 1760, at Whitehaven in the said county, was indebted to the said J. K. in twenty pounds of lawful, &c. for prosecuting, soliciting, and defending divers (a) suits, causes, matters, and things for the said J. S. at his special instance and request, and for his fees due thereon, and for the time, care, trouble, labour, pains, journies, and attendances of the said J. K. spent, taken, used, performed, and bestowed by him, in and about the said suits, causes, matters, and things, at the special instance and request of the said J. S. and for divers sums of money laid out, expended, and paid by the said J. K. at the like special instance and request of the said J. S. and in and about the prosecuting, soliciting, and defending the said suits, causes, matters, and things; and being so indebted, the said J. S. in consideration thereof, afterwards, to wit, on the same day and year above mentioned, at Whitehaven aforesaid, undertook, and then and there faithfully promised that he the said J. S. would well and truly pay the said twenty pounds to the said J. K. when he the said J. S. should be afterwards thereunto requested. (Quantum meruit, and common conclusion to both Courts.)

(a) Or in defending and prosecuting that time commenced against the said of a certain criminal prosecution, before defendant, as the case is.

MIDDLESEX, ff. Christopher Hall the elder and Christopher Hall the younger complain against George Munk, gentleman, one of the attornies of the court of our sovereign lord the king, before the king himself present here in court in his own proper person; for that whereas the said George, on the first of September, A. D. 1782, at Westminster, in the said county of M. was indebted to the said C. H. the elder and C. H. the younger (the said C. H. the elder then and long before, and still, being one of the attornies of the court of our sovereign lord the king of the bench, and the said C. H. the younger then and long before, and still, being one of the attornies of the court of our said lord the king, before the king himself, and the said C. H. the elder and C. H. the younger then and long before, and still, being joint-partners together in the business and profession of attornies as aforesaid) in the sum of one hundred pounds of lawful, &c. for so much money by the said C. H. the elder and C. H. the younger before that time paid, laid out, and expended as agents, solicitors, and attornies of and for the said George, upon his retainer, and at his special instance and request, in prosecuting, defending, and transacting divers causes, suits, and businesses in this court here, and other his majesty's courts of record here at Westminster, and for their fees and labour, care and attendance in and about the prosecuting, defending, and transacting these causes, suits, and businesses,

General indebtedness assumed by two attornies partners, one an attorney of B. R. the other of C. B. for business as agents against an attorney of B. R. where suits were carried on,

ASSUMPSIT GENERAL.—ATTORNIES, &c.

nesses, at the like special instance and request of the said George; and being so indebted, he the said George, in consideration thereof, afterwards, to wit, on the same day and year aforesaid, at Westminster aforesaid, in the said county, undertook, and to the said C. H. the elder and C. H. the younger then and there faithfully promised to pay to them the said sum of money, whenever the said George should be thereto afterwards requested. (Counts on quantum meruit, and for fifty pounds laid out, &c. a Count more general for work and labour, &c. and quantum meruit; money had and received; account stated; common conclusion.)

General indebtedness assumed by administratrix, widow to a serjeant at mace to the sheriffs of London, for fees against an attorney of B. R. surviving partner of another attorney, for the executing writs, &c.

LONDON, ff. A. H. widow, administratrix of all and singular the goods and chattels, rights and credits which were of J. H. her late husband deceased, who died intestate, complains of E. D. gentleman, one of the attornies of the court of our said lord the king, before the king himself present here in court in his proper person; for that whereas the said E. and one R. A. deceased, whom the said E. hath *survived*, in his lifetime, being attornies and *partners* together, on, &c. at, &c. were indebted to the said J. H. deceased, in his lifetime, in the sum of twenty pounds of lawful, &c. for divers *fees* before that time due and payable to the said J. H. deceased, in his lifetime, as *serjeant at mace* to the sheriffs of the city of L. aforesaid, from the said E. and R. A. since deceased, in his lifetime, as such attornies and joint-partners as aforesaid, upon the executing divers writs and processes within the said city of L. aforesaid, of and for the said E. and R. A. deceased, in his lifetime, as serjeant at mace to the sheriffs of the city of L. aforesaid, at the special instance and request of the said F. and R. A. deceased, in his lifetime; and being so indebted, &c. (assumpsit). And whereas, &c. [2d Count for work and labour, journies and attendances, and quantum meruit; add also the money Counts, and conclude thus:] Yet the said E. D. and R. A. deceased, in the lifetime of the said R. A. and the said E. since the decease of the said R. A. not regarding, &c. but contriving, &c. to deceive and defraud the said J. H. deceased, in his lifetime, and the said plaintiff, administratrix as aforesaid, since his decease, in this behalf did not, nor did either of them, in the lifetime of the said R. A. deceased, pay, nor hath he the said E. paid the said several sums of money, or any or either of them, or any part thereof, to the said J. H. deceased, in his lifetime, nor the said Ann, as administratrix as aforesaid, since his decease, (to which said A. H. administration of, &c. which were of the said J. H. deceased, who died intestate on, &c. by A. B. by divine Providence archbishop of C. to whom the granting of administration in that behalf belonged, was in due form of law committed,) although so to do they the said E. and R. A. since deceased, in his lifetime, and the said E. since the decease of the said R. A. were, and each of them was, requested by the said J. H. since deceased, in his lifetime, and by the said Anne since his decease; but to pay the same, or any part thereof, have, and each

Each of them hath hitherto wholly refused, and to pay the same to the said Anne, as administratrix as aforesaid, he the said E. as such survivor as aforesaid, still doth refuse, to the damage of the said Anne of fifty pounds; and therefore she prays relief, &c. (Profect of letters testamentary).

Drawn by Mr. GRAHAM.

FOR that whereas the said defendant, on the first of December 1781, at, &c. was indebted to the said plaintiff in the sum of, &c. for divers journies before that time had and taken by the said plaintiff for the said defendant, in and about the business of the said defendant, at his special instance and request, and for divers attendances of the said plaintiff by the said plaintiff before that time had and made, upon and before a committee of the house of commons, for the said defendant, in and about the business of the said defendant, and at his like special instance and request; and being so indebted, &c. And whereas also afterwards, to wit, on, &c. at, &c. in consideration that the said plaintiff, at the like special instance and request of the said defendant, had before that time taken divers journies for the said defendant in and about the business of the said defendant, and had also had and made divers attendances upon and before the committee of the house of commons for the said defendant, in and about the business of the said defendant, at his like instance and request; he the said defendant assumpsit, &c.

For attending before a committee of the house of commons upon defendant's business.

Quantum meruit.

W. BALDWIN.

MIDDLESEX, ff. Patrick Lawler complains of George Lovelace, being, &c. for that whereas the said George heretofore, to wit, on, &c. at, &c. was indebted to the said Patrick in the sum of fifty pounds of lawful, &c. for the work and labour, care and diligence, skill and attendance of the said Patrick as a hair dresser, by him the said Patrick and his servants before that time done, performed, and bestowed in and about the dressing, cutting, and keeping in order the hair as well of him the said George and Elizabeth his wife as of their children, and divers other infants and children, the scholars of the said Elizabeth the wife of the said George, then residing and being in the house and under the management and direction of her the said Elizabeth the wife of the said George, as keeper and mistress of a boarding school, and for the said George and at his special instance and request, and for hair powder, pomatum, and perfumes, and other necessary things before that time found, provided, used, and applied by the said Patrick in and about the same work and labour for the said George, and at his like special instance and request; and being so indebted, he the said George, in consideration thereof, afterwards, to wit, on, &c. undertook, &c. (Quantum meruit;

Against the master of a boarding school for not paying for the hair dressing of his scholars, &c.

ASSUMPSIT.—BY AND AGAINST PARTICULAR PERSONS,

meruit; work and labour, care and diligence; money laid out, &c. had and received; account stated; and common conclusion.)

THO. BARROW

Declaration at the suit of the owner of a canal for the freight of goods carried from A. to B. by him in his boat.

LANCASHIRE, to wit. The most noble Francis Egerton duke of Bridgewater complains of Samuel Taylor, being, &c. for that whereas the said Samuel on, &c. at, &c. was indebted to the said duke in four hundred pounds of lawful, &c. for the freight, carriage, and conveyance of divers goods and chattels, wares and merchandizes of the said Samuel, before that time carried and conveyed by the said duke and his servants, in certain ships, vessels, boats, barges, and troughs of the said duke, in and along certain canals, from Liverpool in the said county of L. to M. and from M. to A. and from and to divers other parts and places, for the said Samuel, at his special instance and request; and being so indebted, &c. (Counts on quantum meruit thereon.)

Præcipe for original against a peer, at the suit of a surviving partner, for a partnership debt.

MIDDLESEX, ss. If J. C. make you secure, &c. then summon, &c. the right honourable Thomas lord viscount M. baron M. of A. in the county of S. having privilege of parliament, that he be before our lord the king on, &c. wheresoever, &c. to shew, for that whereas the said viscount on, &c. at, &c. was indebted unto the said J. C. and one W. P. now deceased, in his lifetime, and whom the said J. C. hath *survived*, in one hundred pounds of lawful, &c. for divers goods, wares, and merchandizes by the said J. C. and W. P. in his lifetime, before that time sold and delivered to the said viscount, and at his special instance and request; and being so indebted, the said viscount, in consideration thereof, afterwards, to wit, on, &c. at, &c. undertook, and then and there faithfully promised the said J. C. and W. P. in his lifetime, to pay them the said sum of money when he should be thereto afterwards requested; and whereas (quantum meruit accordingly); and whereas, &c. (money laid out, and conclude thus:) Yet the said viscount hath not as yet paid the said several sums of money, or any part thereof, to the said J. C. and W. P. in his lifetime, or to either of them, or to the said J. C. since the decease of the said W. P. to wit, on, &c. and often, both before and afterwards, to wit, at, &c. but he so to do hath hitherto wholly refused, and still refuses, to pay the same, or any part thereof, to the said J. C. to his damage of fifty pounds, as it is said.

Where the damages laid exceed 40l. the following fines are paid to the king: From 40l. to 100 marks, 6s. 8d.; from 100 marks to 100l. 10s. 6d.; from 100l. to 200 marks, 13s. 4d.; from 133l. 6s. 8d.

to 166l. 13s. 4d., 16s. 8d.; from 166l. 13s. 4d. to 200l., 20s.; and for every 100 marks more, 6s. 8d.; and for every 100l. more, 10s.

HANTS.

HANTS, ꝑ. E. F. complains against J. V. being, &c. for that whereas the said E. F. before the making of the promise and undertaking of the said J. V. hereafter mentioned, to wit, on, &c. and for divers years then last past, did and still doth use, exercise, and follow the art and profession of a *surgeon and apothecary*, to wit, at, &c. in, &c. and the said E. F. so using, exercising, and following the said art and profession of a surgeon and apothecary as aforesaid, he the said J. V. on, &c. at, &c. in, &c. in consideration that the said E. F. at the special instance and request of the said J. V. would, as such surgeon and apothecary as aforesaid, attend upon a certain company of soldiers, called and known by the name of Captain Saunders's Independent Company, consisting of divers, to wit, fifty soldiers, (the same company being then and there in quarters at the town of B. aforesaid,) and would endeavour to heal and cure such of the said company of soldiers as were then and there labouring and languishing with wounds, maladies, and diseases, and would find, provide, apply, and administer to such of the said company so labouring and languishing as aforesaid, all necessary medicines, plaisters, drugs, ointments, and other things, in and about the healing and curing the said soldiers of the said wounds, diseases, and maladies under which they were so labouring and languishing as aforesaid; he the said J. V. undertook, and then and there faithfully promised the said plaintiff, to pay and satisfy him the said E. F. for his said attendance, and for the said medicines, &c. which he the said E. F. should find, provide, apply, and administer in and about the healing and curing of the said soldiers so labouring under and languishing as aforesaid, whenever he the said defendant should be thereunto afterwards requested; and the said E. F. in fact saith, that on, &c. at, &c. in, &c. divers, to wit, twenty of the said company of soldiers, were then and there labouring and complaining with divers wounds, &c. and that he the said plaintiff, confiding in the said promise and undertaking of the said defendant by him so made as aforesaid, afterwards, to wit, on, &c. and on divers other days and times between that day and the day of exhibiting the bill of the said plaintiff, he the said plaintiff, as such surgeon and apothecary as aforesaid, did attend on the said company of soldiers, and endeavour to heal and cure the said twenty soldiers of the said wounds, &c. with which they so laboured and languished as aforesaid; and that he the said E. F. did find and provide for, and apply and administer to the said twenty soldiers divers medicines, &c. in and about the healing and curing them of the said wounds, &c. under which they so laboured and languished as aforesaid, to wit, at, &c. in, &c.: and the said E. F. avers, that he reasonably deserved to have of and from the said J. V. for the said attendance of the said E. F. as such surgeon and apothecary as aforesaid upon the said company of soldiers, and for the healing and curing the said twenty soldiers of the said company of the said wounds, &c. under which they so laboured and languished, the

Declaration by a surgeon and apothecary against defendant, who ordered him to attend and administer to a company of soldiers, quartered at plaintiff's town, for not paying him for his attendance and for his medicines,

sum

sum of fifty pounds of lawful, &c. and the medicines, ~~plasters~~, &c. found, provided, applied, and administered by the said E. F. in and about the healing and curing of the said twenty soldiers of those wounds, &c. were reasonably worth the sum of other fifty pounds of like lawful money, to wit, at, &c.; of all which said premises he the said defendant afterwards, to wit, on, &c. at, &c. there had notice, and was requested to satisfy to the said plaintiff the said sums of money, according to the promise and undertaking of the said defendant so by him made as aforesaid: and whereas, &c. (common Count for the work and labour, care and diligence of plaintiff, as a surgeon and apothecary, in curing other twenty soldiers at defendant's request, and for medicines, &c.): and whereas, &c. (quantum meruit to that Count); and whereas, &c. (Count for money had and received, and common breach.)

Drawn by Mr. CROMPTON.

Indebitatus assumpsit against an executor of an executrix of the survivor of two persons, joint contractors for cattle sold and delivered.

LONDON, to wit. J. G. late of Potter's Bar in the county of Middlesex, yeoman, executor of the last will and testament of S. C. deceased, who in her life time was sole executrix of the last will and testament of W. R. deceased, was attached to answer unto J. R. in a plea of trespass upon the case, &c.; and thereupon the said J. R. by Thomas Wild his attorney, complains, that whereas the said William and one Ann R. also deceased, whom the said William survived, in the respective lifetimes of the said William and Ann, to wit, on the first day of February, in the year of Our Lord 1786, at London aforesaid, in the parish of St. Mary le Bow, in the ward of Cheap, were indebted to the said J. R. in the sum of forty pounds of lawful money of Great Britain, for certain cattle by the said J. R. before that time sold and delivered to the said William and Ann, and at their special instance and request; and being so indebted, they the said William and Ann, in their respective lifetimes, in consideration thereof, afterwards, to wit, on the day and year aforesaid, at L. aforesaid, in the parish and ward aforesaid, undertook, and faithfully promised the said J. R. to pay him the said sum of money, when they the said William and Ann should be thereto afterwards requested.

Quantum meruit.

And whereas afterwards, in the respective lifetimes of the said William and Ann, to wit, on the day and year aforesaid, at London aforesaid, in the parish and ward aforesaid, in consideration that the said J. R. had before that time sold and delivered certain other cattle to the said William and Ann, at their like special instance and request, they the said William and Ann undertook, and then and there faithfully promised the said J. R. to pay him so much money as he therefore reasonably deserved to have, when they the said William and Anne should be thereto afterwards requested: and the said J. R. avers, that he therefore reasonably deserved to have the further sum of forty pounds of like lawful money, to wit, at London aforesaid, in the parish and ward aforesaid; whereof the said William and Ann in their respective

live

tive lifetimes, afterwards, to wit, on the day and year aforesaid, there had notice. And whereas the said William and Ann, in their respective lifetimes, afterwards, to wit, on the day and year aforesaid, at London aforesaid, in the parish and ward aforesaid, were indebted to the said J. R. in the further sum of forty pounds of like lawful money, as well for divers journies on horseback by the said J. R. before that time had and taken as for the work and labour of the said J. R. by him before that time done and performed in and about the business of the said William and Ann, at their like instance and request; and being so indebted, they the said William and Ann in their respective lifetimes, in consideration thereof, afterwards, to wit, on the day and year aforesaid, at London aforesaid, in the parish and ward aforesaid, undertook, and faithfully promised the said J. R. to pay him the said last mentioned sum of money when they the said William and Ann should be thereto afterwards requested: And whereas afterwards, in the respective lifetimes of the said William and Ann, to wit, on the day and year aforesaid, at London aforesaid, in the parish and ward aforesaid, in consideration that the said J. R. at the like instance and request of the said William and Ann, had before that time had and taken divers other journies on horseback, and also had done and performed other his work and labour in and about the business of the said William and Anne, they the said William and Ann undertook, and then and there faithfully promised the said J. R. to pay him so much money as he therefore reasonably deserved to have, when they the said William and Ann should be thereto afterwards requested; and the said J. R. avers, that he therefore reasonably deserved to have the further sum of forty pounds, of like lawful money, to wit, at London aforesaid, in the parish and ward aforesaid, whereof the said William and Ann in their respective lifetimes, afterwards, to wit, on the day and year aforesaid, there had notice. And whereas the said William and Ann in their respective lifetimes, afterwards, to wit, on the day and year aforesaid, at London aforesaid, in the parish and ward aforesaid, were indebted to the said J. R. in the further sum of forty pounds of like lawful money for the use and hire of divers mares and geldings of the said J. R. by him before that time let to hire to the said William and Ann, at their like instance and request, and by the said William and Ann, according to that letting to hire, had and used for a long space of time then elapsed; and being so indebted, they the said William and Ann in their respective lifetimes, in consideration thereof, afterwards, to wit, on the day and year aforesaid, at L. aforesaid, in the parish and ward aforesaid, undertook, and faithfully promised the said J. R. to pay him the said last mentioned sum of money when they the said William and Ann should be thereto afterwards requested: And whereas afterwards, in the respective lifetimes of the said William and Ann, to wit, on the day and year aforesaid, at London aforesaid, in the parish and ward aforesaid, in consideration that the said

2d Count, for
divers journies
on horseback.

Quantum pariat.

3d Count,
use and hire of
divers mares and
geldings.

Quantum meruit.

Money laid out
and expended.

Conclusion.
Against the exe-
cutor of the exe-
cutrix of the
survivor of two
persons joint
contractors.

J. R. at the like instance and request of the said William and Ann, had before that time let to hire to the said William and Ann divers other mares and geldings of him the said J. R. and that the said William and Ann, according to that letting to hire, had used the same for a long space of time then elapsed, they the said William and Ann undertook, and then and there faithfully promised the said J. R. to pay him so much money as he therefore reasonably deserved to have, when they the said William and Ann should be thereto afterwards requested; and the said J. R. avers, that he therefore reasonably deserved to have the further sum of forty pounds of like lawful money, to wit, at L. aforesaid, in the parish and ward aforesaid; whereof the said William and Ann in their respective lifetimes, afterwards, to wit, on the day and year aforesaid, there had notice. And whereas the said William and Ann in their respective lifetimes, afterwards, to wit, on the day and year aforesaid, at London aforesaid, in the parish and ward aforesaid, were indebted to the said J. R. in the further sum of forty pounds of like lawful money, for money by the said J. R. before that time paid, laid out, and expended for the use of the said William and Ann, at their like instance and request; and being so indebted, they the said William and Ann in their respective lifetimes, in consideration thereof, afterwards, to wit, on the day and year aforesaid, at London aforesaid, in the parish and ward aforesaid, undertook, and faithfully promised the said J. R. to pay him the said last-mentioned sum of money, when they the said William and Ann should be thereto afterwards requested: Yet the said William and Ann in their respective lifetimes, before the decease of the said Ann, and the said William in his lifetime, after the decease of the said Ann, and the said Sarah, executrix as aforesaid, in her lifetime, after the respective deceases of the said Ann and William, and the said J. G. executor as aforesaid, after the respective deceases of the said Ann, William, and Sarah, not regarding the several promises and undertakings so made by the said William and Ann in their respective lifetimes as aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said J. R. in this behalf, have not, nor hath either of them, yet paid the said several sums of money, or any part thereof, to the said J. R. (although the said William in his lifetime, afterwards, to wit, on the day and year last aforesaid, and the said Sarah, executrix as aforesaid, in her lifetime, after the decease of the said William, to wit, on the first day of March in the year 1787 aforesaid, and the said J. G. executor as aforesaid, after the respective deceases of the said William and Sarah, to wit, on the said second day of April in that year, were severally requested to pay the same to the said J. R. to wit, at London aforesaid, in the parish and ward aforesaid) but to do this the said William in his lifetime, and the said Sarah, executrix as aforesaid, in her lifetime, after the decease of the said William, and the said J. G. executor as aforesaid, after the respective deceases of the said William and Sarah, have, and each of them hath, wholly refused, and

the said J. G. executor as aforesaid, still refuses so to do, and the same and every part thereof still remains wholly due and unpaid to the said J. R. wherefore the said J. R. says, that he is injured and has sustained damage to the amount of fifty pounds; and therefore he brings suit, &c.

LONDON, ss. J. G. late of Potters Bar in the county of Middlesex, yeoman; executor of the last will and testament of *Indebitatus of* S. C. deceased, who in her lifetime was sole executrix of the *sumpsit in C. B.* last will and testament of William R. the son deceased, which *by the executor* said William R. and one Ann R. deceased, whom the said William R. survived, in their respective lifetimes were executor and *of an executrix* executrix of the last will and testament of William R. the father *of the surviving* also deceased, and which said William R. the son, in his lifetime, *co-executor, on* after the death of the said Ann R. was the surviving executor *a promise by the* thereof, was attached to answer unto John R. in a plea of trespass *testator for the* upon the case, &c. : and thereupon the said John R. by Thomas Wild his attorney, complains, that whereas the said William R. the father, in his lifetime, to wit, on the first day of January A. D. 1774, at London aforesaid, in the parish of St. Mary le Bow in the ward of Cheap, was indebted to the said John in the sum of eighty pounds of lawful money of Great Britain, for the salary and wages before that time due and payable from the said William R. the father to the said John R. for the service of the said John R. before then done and performed as the hired servant of the said William R. the father, at his special instance and request, and on his retainer; and being so indebted, he the said William the father, in his lifetime, in consideration thereof, afterwards, to wit, on the day and year aforesaid, at London aforesaid, in the parish and ward aforesaid, undertook, and faithfully promised the said John R. to pay him the said sum of money, when the said William R. the father should be thereto afterwards requested : And whereas afterwards, in the lifetime of the said William R. the father, to wit, on the day and year aforesaid, at London aforesaid, in the parish and ward aforesaid, in consideration that the said John R. had before that time done and performed, other his service as the hired servant of the said William R. the father, at his like instance and request, and on his retainer, he the said William R. the father undertook, and then and there faithfully promised the said John R. to pay him so much money as he the said John R. for his said last-mentioned service, and for his salary and wages in that behalf reasonably deserved to have, when he the said William the father should be thereto afterwards requested; and the said John R. avers that he therefore reasonably deserved to have had the further sum of eighty pounds of like lawful money, to wit, at L. aforesaid, in the parish and ward aforesaid, whereof the said William R. the father, in his lifetime, afterwards, to wit, on the day and year aforesaid, there had notice : Yet the said William R. the father, in his lifetime, and the said William R. the son, and Ann R. executor *Quantum meruit,*

Conclusion.

Omit the words between inverted commas.

and executrix as aforesaid, in their respective lifetimes, *after the death of the said William R. the father*, and before the death of the said Ann R. and the said William R. the son, surviving executor as aforesaid, in his lifetime, *after the respective deaths of the said William R. the father, and "death of the said" Ann R.* and the said Sarah C. executrix as aforesaid, in her lifetime, *after the respective deaths of the said William R. the father, "son, and" Ann R. and William R. the son*, and the said John G. executor as aforesaid, after the respective deaths of the said *William R. the father*, Ann R. William R. the son, and Sarah C. not regarding the several promises and undertakings so made by the said William R. the father, "son, and Ann R. executors and executrix as aforesaid, in their respective lifetimes, after the death of the said W. R." in his lifetime, as aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said J. R. in this behalf, have not, nor hath either of them, yet paid the said several sums of money, "in those promises and undertakings mentioned," or any part thereof, to the said John R. although the said William R. the father, in his lifetime, afterwards, to wit, on the day and year aforesaid, and the said William R. the son, and Ann R. executor and executrix as aforesaid, in their respective lifetimes, *after the death of the said William R. the father*, and before the death of the said Ann R. "afterwards," to wit, on the first day of February in the year of Our Lord 1786, "day and year last aforesaid," and the said William R. the son, surviving executor as aforesaid, in his lifetime, after the respective deaths of the said *William R. the father*, Ann R. to wit, on the "said" first day of June, in the same year "1786 aforesaid," and the said Sarah C. executrix as aforesaid, in her lifetime, after the respective deaths of the said *William R. the father*, Ann R. and William R. the son, to wit, on the "said" first day of March A. D. 1787, and the said J. G. executor as aforesaid, after the respective deaths of the said *William R. the father*, Ann R. William R. the son, and Sarah C. to wit, on the second day of April in the same year, were severally requested to pay the same to the said John R. that is to say, at L. aforesaid, in the parish and ward aforesaid; but to do this the said *William R. the father*, in his lifetime, and the said William R. the son, and Ann R. executor and executrix as aforesaid, in their respective lifetimes, *after the death of the said William R. the father*, and before the death of the said Ann R. and the said William R. the son, surviving executor as aforesaid, in his lifetime, after the respective deaths of the said *William R. the father* Ann R. and the said Sarah C. executrix as aforesaid, in her lifetime, after the respective deaths of the said *William R. her father*, Ann R. and William R. the son, and the said J. G. executor as aforesaid, after the respective deaths of the said *William R. the father*, Ann R. William R. the son, and Sarah C. have, and each of them hath, hitherto wholly refused, and the said John G. executor as aforesaid,

said, still refuses so to do, and the same and every part thereof still remains wholly due and unpaid to the said John R. And whereas the said William R. the father, in his lifetime, to wit, on the first day of January, in the year 1774th aforesaid, at L. aforesaid, in the parish and ward aforesaid, was indebted to the said John R. in the further sum of eighty pounds of like lawful money, for the work and labour of the said John R. by him before that time done and performed for the said William R. the father, at his like instance and request; and being so indebted at the time of his death, and the said last-mentioned sum of money remaining wholly unpaid and unsatisfied, they the said William R. the son, and Ann R. executor and executrix as aforesaid, in their respective lifetimes, in consideration thereof, afterwards, and after the death of the said William R. the father, to wit, on the first day of April A. D. 1785, at L. aforesaid, in the parish and ward aforesaid, undertook, and faithfully promised the said John R. to pay him the said last mentioned sum of money when they the said W. R. the son; and A. R. executor and executrix as aforesaid, should be thereto afterwards requested: And whereas afterwards, and after the death of the said William R. the father, and in the respective lifetimes of the said W. R. the son, and A. R. to wit, on the day and year last aforesaid, at L. aforesaid, in the parish and ward aforesaid, in consideration that the said John R. in the lifetime of the said W. R. the father, had done and performed other his work and labour for the said W. R. the father, at his like instance and request, they the said W. R. the son, and Ann R. executor and executrix as aforesaid, undertook, and then and there faithfully promised the said John R. to pay to him so much money as he therefore reasonably deserved to have, when they the said W. R. the son; and Ann R. executor and executrix as aforesaid, should be thereto afterwards requested; and the said John R. avers, that he therefore reasonably deserved to have the further sum of eighty pounds of like lawful money, to wit, at L. aforesaid, in the parish and ward aforesaid, whereof the said W. R. the son, and Ann R. executor and executrix as aforesaid, in their respective lifetimes, afterwards, to wit, on the day and year last aforesaid, there had notice. And whereas the said William R. the son, and Ann R. executor and executrix as aforesaid, in their respective lifetimes, afterwards, to wit, on the day and year last aforesaid, accounted together with the said John R. of and concerning divers other sums of money, which were due and owing from the said W. R. the father in his lifetime to the said John R. and were then remaining in arrear and unpaid, and upon that accounting the said William R. the son, and Ann R. executor and executrix, were then and there found in arrear and indebted to the said John R. in the further sum of eighty pounds of like lawful money; and being so found in arrear and indebted, they the said W. R. the son, and Ann R. executor and executrix as aforesaid, in their respective lifetimes, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at L. aforesaid, in the parish and ward aforesaid, undertook, and faithfully promised the said John R. to

ad Count, for other work and labour; on promising executor and executrix after the death of W. R. the father.

Quantum meriti:

3d Count. On an account stated between plaintiff and executor and executrix of J. R. in the lifetime of deceased executrix.

ASSUMPSIT.—BY AND AGAINST PARTICULAR PERSONS.

pay him the said last mentioned sum of money, when he the said W. R. the son, and A. R. executor and executrix as aforesaid, should be thereto afterwards requested: Yet, &c. (Breach like the first Count, omitting the words in italic, and inserting the words within *inverted commas*, which are omitted in the first and second Counts.)

I Have abridged this precedent, as to the exclusion of more important matter, as in page 159, 160. ante, on Tolls.

Declaration by
A. and B. administrators cum testamento annexo de bonis non, of administrators against defendant for the use and hire of a wharf and divers warehouses.

LONDON, to wit. George Shepley esquire and John Lloyd gentleman, administrators with the will annexed of all and singular the goods, chattels, and credits which were of Richard Davies deceased at the time of his death left unadministered by Samuel Davies, which said S. D. in his life-time, and at the time of his death, was also administrator with the will annexed of all and singular the goods, chattels, and credits aforesaid, complain of Joseph Gattey esquire, being, &c. for that whereas the said Joseph heretofore, to wit, on the first day of August, A. D. 1780, to wit, at L. aforesaid, in the parish of St. Mary le Bow in the ward of Cheap, was indebted to the said Richard D. in his lifetime in the sum of one hundred and sixty pounds of lawful, &c. for the use and hire of a certain wharf, and of divers, to wit, ten warehouses of the said R. D. situate and being in the parish of St. John, Southwark, in the county of S. before that time let to hire to the said Joseph, and at his special instance and request, and by him the said Joseph, according to such letting to hire, before that time had and used in and about the depositing and storing and keeping therein of divers goods, wares, and merchandizes; and being so indebted (assumpsit to the said R. D. in his lifetime.) And whereas afterwards, to wit, on the day and year aforesaid, at L. aforesaid, in consideration that the said R. D. in his lifetime, at the like special instance and request of the said Joseph, had before that time let to hire to the said Joseph a certain other wharf and divers, to wit, ten other warehouses of him the said R. D. situate and being in the said parish of St. John, Southwark, in the county of S. aforesaid, and that he the said Joseph had, according to such letting to hire, before that time had and used the same, for, in, and about the depositing, storing, and keeping therein of divers other goods, wares, and merchandizes, he the said Joseph then and there undertook, and faithfully promised the said R. D. in his lifetime to pay him [quantum meruit] [indebitatus assumpsit to the testator in his lifetime for the work and labour, care and diligence of the said R. D. and his servants before that done, performed, and bestowed in and about the shipping, landing, weighing, housing, unhousing, rehousing, filling, turning, loading, of divers other goods, wares, and merchandizes for the said Joseph, and at his like special instance and request] quantum meruit thereon. [Two Counts for work and labour generally, money paid, had,

had, and received, account stated, and conclusion as follows.] Yet the said Joseph, not regarding his said several promises and undertakings so by him made in manner and form aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said R. D. in his lifetime, and the said S. D. in his lifetime, after the death of the said R. D. (to which said S. D. in his lifetime, after the death of the said R. D. to wit, on the twenty-ninth of December, A. D. 1780, at L. aforesaid, in the parish and ward aforesaid, administration with the will annexed of all and singular the goods, chattels, and credits which were of the said R. D. deceased at the time of his death, by Frederick by divine providence archbishop of Canterbury, primate of all England, and metropolitan, in due form of law was granted,) and the said George and John, after the several respective deaths of the said R. D. and S. D. (to which said G. and J. after the several respective deaths of the said R. D. and S. D. to wit, on the twenty-eighth of March, A. D. 1781, at L. aforesaid, in the parish and ward aforesaid, administration with the will annexed of all and singular the goods, chattels, and credits aforesaid left unadministered by the said S. D. administration as aforesaid by Frederick by divine providence archbishop, primate, and metropolitan as aforesaid, in due form of law was granted,) he the said Joseph hath not paid the said several sums of money, or any or either of them, or any part thereof, either to the said R. D. in his lifetime, or to the said S. D. administrator in his lifetime, after the death of the said R. D. or to the said George and John, administrators as aforesaid, since the several and respective deaths of the said R. D. and S. D. or either of them, (although so to do this the said Joseph was requested by the said R. D. in his lifetime, to wit, on the day and year first above mentioned, and often afterwards, and by the said S. D. administrator as aforesaid, in his lifetime, after the death of the said R. D. and by the said George and John, administrators as aforesaid since the several and respective deaths of the said R. D. and S. D. to wit, at L. aforesaid, in the parish and ward aforesaid,) but he the said Joseph to pay the said several sums of money, or any or either of them, or any part thereof, in manner aforesaid, hath hitherto wholly refused, and still refuses, to pay the same, or any part thereof, to the said G. and J. administrators as aforesaid, or either of them, to the damage of the said G. and J. of one hundred pounds; and therefore they bring suit, &c.: and they bring into court here the letters of administration of the said archbishop, as well those which were granted to the said S. D. in his lifetime as those which were afterwards granted to the said G. and J. which sufficiently testify to the court here the granting the several administrations aforesaid to the said S. D. in his lifetime, and to the said G. and J. since the death of the said S. D. in his lifetime, and to the said G. and J. since the death of the said S. D. the dates whereof are the days and years above in that behalf respectively mentioned.

Conclusion.

By administrators de bonis non of an administrator.

Proffert of letters testamentary.

Drawn by W. TIDD.

Declaration by
an administrator
for foreign money,
viz. rupees, lent
and advanced by
the intestate to
the defendant.

MIDDLESEX, to wit. D. S. late of &c. was attached to answer H. C. administratrix of all and singular the goods and chattels which were belonging to A. C. deceased, at the time of his death, who died intestate, of a plea of trespass on the case; and thereupon the said H. C. by A. B. her attorney, complains, that whereas the said defendant, on, &c. at, &c. in, &c. was indebted to the said A. C. deceased, in his lifetime in the sum of ten thousand rupees of foreign money, to wit, of the money of Bombay in the East Indies, of great value, to wit, of the value of two thousand pounds of lawful, &c. for the like sum of the aforesaid foreign money by the said A. C. deceased, in his lifetime before that time paid, laid out, and expended to and for the use of the said defendant, and at his special instance and request; and being so indebted, he the said defendant, in consideration thereof, afterwards, to wit, &c. undertook, and then and there faithfully promised the said A. C. deceased, in his lifetime to pay him the said sum of foreign money, when he the said defendant should be thereto afterwards requested. And whereas [Count for ten thousand rupees lent and advanced, money had and received, and an account stated; common Counts for money paid, &c. lent and advanced, had and received]: Yet the said defendant, not regarding, &c. but contriving, &c. the said A. C. deceased, in his lifetime, and the said H. C. (to which said H. C. administration of all and singular the goods and chattels which were of the said A. C. deceased, at the time of his death, who died intestate, after the death of the said A. C. to wit, on, &c. at, &c. to whom the granting of administration in that behalf of right belonged, was committed after the death of the said A. C.) in this behalf did not pay to the said A. C. deceased, in his lifetime, nor to the said H. C. administratrix as aforesaid, since the death of the said A. C. the said several sums of foreign money, or any of them, or any part thereof, or the value thereof, or of any part thereof, or the said several sums of money, or any or either of them, or any part thereof, although so to do he the said defendant was requested by the said A. C. deceased in his lifetime, or to the said H. C. since his death, he the said defendant hath altogether refused, and still refuses, to pay the same to the said H. C. as administratrix as aforesaid, whereupon the said H. C. saith that she is injured, &c. (Profect of letters testamentary.)

Drawn by Mr. GRAHAM.

Declaration in
assumpsit for se-
veral fines due on
admission to se-
veral distinct sets
of copyhold pre-
mises (in conform-
ity to Judge
Blackstone's
Opinion) against
the defendant
on and from
the administratrix de
mortuo.

STAFFORDSHIRE, &c. The right honourable John Lord viscount Dudley and Ward complains of James Goodin and Margaretta his wife, which said Margaretta is the administratrix of all and singular the goods and chattels, rights and credits which were belonging to John Newton deceased, at the time of his death unadministered by Ann Parr widow, who in her lifetime, and at the time of her death, was administratrix of all and singular the goods and chattels, rights and credits which were of the said John Newton deceased at the time of his death, who died intestate, being, &c. for that whereas the said viscount, on, &c. and

and long before, was, and from thence hitherto hath been, and still is, lord of the manor of Kingwinford, in the said county of S. of which said manor divers, to wit, eight acres of land, called Dacre's Hill, with the appurtenances, situate, lying, and being within the said manor, now are, and from time whereof, &c. have been parcel and customary tenements demised and demiseable by copy of the court-rolls of the said manor for the time being, to any person or persons willing to take the same, in fee simple or otherwise, at the will of the said lord, according to the custom of the said manor. And whereas within the said manor of Kingwinford there now is, and from time whereof, &c. there hath been a certain ancient and laudable custom there used and approved of, that every customary tenant of the said manor, upon his admission to any customary tenement parcel of the said manor, by the lord of the said manor, by himself or by the steward of the court of the said manor for the time being, hath paid, and hath used and been accustomed, and of right ought to pay, to the lords of the said manor for the time being, being lords at the time of such admission, a reasonable sum to be assessed by the lord of the said manor for the time being, by himself or by the steward of the court of the said manor for the time being, for a fine for such his admission to the said customary tenement; and the said viscount further saith, that the said viscount, at the instance and request of the said John N. upon the said, &c. within the manor aforesaid, by Richard Keeling gentleman, then steward for the said viscount of his court of the said manor, according to the custom of the said manor, admitted the said John N. to the said eight acres of land, with the appurtenances, to have and to hold the same unto the said J. N. and to his heirs forever, at the will of the lord, according to the custom of the said manor: and the said viscount in fact further saith, that the said eight acres of land, with the appurtenances, at the time of the admission of the said J. N. thereunto, were of the annual value of eight pounds; and the said viscount, then being lord of the said manor, did then, to wit, at the time of the said admission by the said Richard Keeling, then his steward of the said court of the said manor, assess and appoint the sum of fourteen pounds of lawful, &c. as and for a fine to be paid by the said J. N. to the said viscount, for the said admission of him the said J. N. to the said eight acres, being such customary tenement as aforesaid, to wit, at, &c. aforesaid, which said sum of fourteen pounds then and there was a reasonable sum of money to have been paid by the said J. N. to the said viscount, then lord of the manor aforesaid, for the said admission of the said J. N. to the customary tenement aforesaid, with the appurtenances; whereof the said J. N. afterwards, to wit, on the said, &c. at, &c. aforesaid, had notice; and thereupon the said J. N. in consideration of the premises, afterwards, to wit, on the day and year last aforesaid, at, &c. aforesaid, undertook, and faithfully promised the said viscount, to pay him the said sum of fourteen pounds when he should be thereto afterwards requested. [There were three other Counts drawn exactly on the same indenture, for different fines on different admissions to different

Conclusion.

By *baron and fme*
administratrix de
bris non.

ferent premises, and an additional Count for one hundred and fifty pounds fine for *respective* admissions to the *several* customary tenements respectively, like the first Count; another Count for money had and received]: Yet the said J. N. in his lifetime; and the said Ann Parr, administratrix as aforesaid, in her lifetime, after the death of the said J. N. and the said James, and Margaretta administratrix as aforesaid, since the respective deaths of the said J. N. and Ann Parr, not regarding the said several promises and undertakings so as aforesaid made by the said J. N. in his lifetime, but contriving, &c. have not, nor hath any or either of them, paid the said several sums of money, or any part thereof, to the said viscount, (although to do this the said J. N. and the said Ann Parr administratrix as aforesaid, in her lifetime, after the death of the said J. N. were oftentimes requested by the said viscount, and although they the said James and Margaretta administratrix as aforesaid, were thereto severally requested by the said viscount, after the several and respective deaths of the said J. N. and Ann Parr, to wit, on the day and year last aforesaid, and often both before and afterwards, to wit, at, &c. aforesaid,) but they the said J. N. and Ann Parr to pay the same, or any part thereof, to the said viscount in the lifetime of the said J. N. and Ann Parr, have altogether refused; and the said James and M. administratrix as aforesaid, to pay the same, or any part thereof, to the said viscount, since the respective deaths of the said J. N. and A. P. have, and each of them hath, hitherto wholly refused, and still do, and each of them doth, wholly refuse so to do: Damages forty pounds. See plea and replication to the like Declaration post. Pleas in Assumpsit—Tender.

Cambridge Lent assizes, Hitch v. Wallis, B. R. where assumpsit lies for a fine on admission to a copyhold. The declaration in Hitch v. Wallis was for a gross sum of fifty one pounds, due on admission to certain customary tenements; and it appeared by the court rolls of the manor, that the tenements consisted of distinct parcels, to which there had always been, and were in the last instance, distinct admissions, and three distinct quit-rents. Objection was made to the declaration, that it ought to have set forth the several fines that were due on each admission, specifying how much in each parcel in different Count, and not a gross sum for the whole in one Count: vide 4 Co. Taverner's case, and Cro. Eliz. 779. Dalton v. Hammond. It was in the last case (inter alia) resolved, "That if divers copyholds descend to one heir, the lord cannot demand one fine for them all, but he ought to demand several fines, for peradventure the heir may accept the one at the fine assessed, and refuse the other upon such fines. It was answered at the trial on the part of the plaintiff, that the objection, if at any time valid, was waived

"how by the defendant's plea, which was
 "a tender of a gross sum paid into court.
 "Mr. J. Blackstone allowed the objection, and consulted the plaintiff. He
 "said that copyholds depend on custom:
 "there can be no new copyholds, nor
 "old ones with new rents; if the rents
 "are varied, it ceases to be the same
 "copyhold; their rents are the criteria
 "of copyholds, and though put together
 "they will not unite or alter the nature
 "of different copyholds. Strictly speak-
 "ing, on each copyhold there ought to
 "be a distinct admission; but for con-
 "venience of the tenants, it is usual to
 "make only one; and since the stamp
 "acts, the lords and tenants are fond of
 "putting different copyholds together,
 "to avoid these acts. On the admission
 "of the tenant, the lord ought to de-
 "mand different fines: so it is now
 "said he did, but it does not appear so
 "on the record. Here are three copy-
 "holds: one rent unknown; the second,
 "one pound twelve shillings and four-
 "pence; the third, two shillings. They
 "appear to have been consolidated, and
 "one fine (not fines as if consisting of
 "different sums) is assised for all; and
 "the

" the declaration following that 'affess-
 " ment is wrong, for in fact there is not
 " one fine, but three, and it is necessary
 " to specify the fines, for the tenant
 " may admit the reasonableness of one,
 " and not that of others; but if thrown
 " into hotchpot, he may be defeated,
 " though some were unreasonable; for if
 " one was as much below the mark as
 " the other above it, the tenant might
 " not be able to object to the whole,
 " though he might well object to some
 " separately. But it is said we may re-
 " sort to the second Count, which is on
 " a general undertaking; but the same
 " objection holds there, for that Count
 " does not go for reasonable fines, but

" for a fine. Secondly, it is answered,
 " that defendant, by his tender of a gross
 " sum, has waived the objection; but
 " the plaintiff must prevail by the
 " strength of his own cause, and not the
 " weakness of the adverse party. The
 " plaintiff ought to have declared sepa-
 " rately for each fine; thus the defend-
 " ant might object to each, and the
 " jury judge of the reasonableness of
 " each; otherwise, if one was too much,
 " and the other too small, the lord might
 " force the tenant by this consolidation
 " to take several different copyholders
 " on one admission." Lord Dudley v.
 Goodier and Wife administratrix.

· THAT whereas the said A. B. on the eighth day of September,
 A. D. 1775, to wit, at, &c. was the owner or master of a cer-
 tain ship called, &c. then being in the river of Thames, and was
 then also possessed of a lading of coals, that is to say, a lading of
 coals of a certain quality or sort called Tanfield moor coals, then
 deposited and being in and on board of the said ship, to wit, at,
 &c. and the said A. B. so being owner or master of the said ship,
 and so being possessed of the said lading of coals therein, it was af-
 terwards, to wit, on the same day and year, at, &c. aforesaid,
 agreed by and between the said C. D. and E. F. of the one part,
 and the said A. B. of the other part, as follows, that is to say, that
 the said C. D. and E. F. had bought of the said A. B. his said
 whole lading of the said coals at thirty pounds ten shillings by the
 score, for each and every score of chaldron of the said coals, and
 metage as usual, to be delivered from and out of the said ship, in
 the said river of Thames, by the said A. B. unto the said C. D.
 and E. F. and to be by the said C. D. and E. F. accordingly ac-
 cepted, taken, and carried away in seven days then next following,
 and that the price of the said cargo of coals should be paid as fol-
 lows, that is to say, on delivery of the said cargo of coals one third
 part of the value thereof in cash, one other third part thereof in a
 note at sixty days, to be dated on the day after the delivery of the said
 ship, to be payable to the order of the said A. B. and the remain-
 ing one third part thereof when the duty for the said coals should
 become due at the custom-house; and the said A. B. agreed to
 pay the market dues for the said coals, and to allow the said C. D.
 and E. F. two pounds per cent. on the one-third of the said price
 so agreed to be paid in a note at sixty days as aforesaid, if the same
 should be paid in cash on the ship's delivery, and two pounds per
 cent. on the one-third of the said price so agreed to be paid when
 the duty for the said coals should become due at the custom-house,
 if paid in time to save the discount on the said duty at the said
 custom-house: And the said agreement being so made, (&c. mu-
 tual promises) and the said A. B. avers, that he the said A. B. af-
 ter the making of the said agreement, and within the said seven
 days then next following, was ready and willing to deliver the

By the owner
 and master of a
 ship laden with
 coals lying in the
 river Thames,
 against defend-
 ant, who had
 purchased the
 lading of coals
 to be taken a-
 way within seven
 days. Defendant
 took a part but
 did not take the
 residue, where-
 by plaintiff was
 detained on de-
 morage twenty
 days.

187.

* See ante, p. 152.

whole

ASSUMPSIT GENERAL.—FOR DEMORAGE.

whole of the said lading of coals from and out of the said ship in the said river unto the said C. D. and E. F. and did, during that time, deliver great part of the said loading of coals from and out of the said ship unto the said C. D. and E. F. and would during that time have delivered the residue of the said loading of coals from and out of the said ship unto the said C. D. and E. F. if they would have accepted, taken, and carried away the same; and requested the said C. D. and E. F. to accept, &c. accordingly, to wit, at, &c. And although he the said A. B. hath always since the making of the said agreement, hitherto well and truly observed, performed, fulfilled, and kept every thing in the said agreement mentioned and contained on his part and behalf to be observed, &c. according to the tenor and effect, true intent and meaning of the said agreement; yet the said C. D. and E. F. not regarding the said promise and undertaking so by them made, in manner and form, &c. in this behalf as aforesaid, but contriving, &c. in this behalf did not, nor would within seven days next after the making the said agreement; accept, or take away the residue of the said loading of coals (although to perform their said agreement, and their said promise and undertaking in this behalf, they the said C. D. and E. F. during the said seven days, to wit, on the twelfth of September, in the year last aforesaid, and often afterwards, to wit, at, &c. were requested by the said A. B. but they to do the same wholly refused and neglected, contrary to the said agreement, and their said promise and undertaking in this behalf; whereby the said A. B. was obliged to keep and continue his said ship, and the same was thereby detained in the said river for the delivery of the said residue of the said loading of coals for a long time, to wit, for the space of twenty days over and beyond the said space of seven days, and longer than the time so agreed upon for the said delivery and acceptance thereof as aforesaid; whereby the said ship of the said A. B. was, during that time, incumbered and taken up with the residue of the said loading of coals, and the said A. B. thereby during that time lost, and was deprived of the use and benefit of his said ship, to wit, at, &c. And whereas the said A. B. heretofore, to wit, on, &c. [State plaintiff to be possessed of ship and coals as in first Count.] And the said A. B. so being owner, &c. of the said last-mentioned ship, and so being possessed of the said last-mentioned loading of coals therein, on the same day and year aforesaid, at, &c. aforesaid, in consideration that the said A. B. at the special instance and request of the said C. D. and E. F. had sold to the said E. D. and E. F. the said A. B.'s whole loading of coals last-mentioned for a certain price, then and there agreed upon between the said C. D. and E. F.; and the said A. B. had agreed to deliver the said last-mentioned loading of coals from and out of the said last-mentioned ship unto the said C. D. and E. F. in seven days then next following, they the said C. D. and E. F. then and there undertook and faithfully promised the said A. B. to accept and take away the said loading of coals from the said last-mentioned ship accordingly, within the said seven days; and the

ad Count,
for not accept-
ing it.

the said A. B. avers, that he the said A. B. after the making of the said last-mentioned promise and undertaking, and during the whole of the said seven days, was ready and offered to deliver, and would have delivered the whole of the said last-mentioned loading of coals from and out of the said ship unto the said C. D. and E. F. and during the said seven days did deliver great part of the said last-mentioned loading of coals, from and out of the said last-mentioned ship, unto the said C. D. and E. F. and requested the said C. D. and E. F. to accept and take the residue of the said last-mentioned loading of coals, accordingly, to wit, at, &c. yet, &c. [a similar conclusion to the first Count, omitting any mention of an agreement, and alledging the demorage for ten days only.] And whereas also the said A. B. &c. as in second Count] in consideration that the said A. B. at the special instance and request of the said C. D. and E. F. had sold to the said C. D. and E. F. the said last-mentioned loading of coals, so laden in the said last-mentioned ship, for a certain price then and there agreed upon between the said C. D. and E. F. and the said A. B. and they the said C. D. and E. F. undertook, and then and there faithfully promised the said A. B. to deliver the said last-mentioned ship of her said loading of coals in seven days then next following; and the said A. B. says, that although the said C. D. and E. F. after the making of the said last-mentioned promise and undertaking, and within the said time or space of seven days then next following, did deliver the said last-mentioned ship of her said loading of coals, and might within that time have delivered the said ship of the residue of her said last-mentioned loading of coals, and were requested by the said R. F. so to do, to wit, at, &c. yet, &c. did not deliver the said last-mentioned ship of the residue of her said last-mentioned loading of coals, [although to perform, &c.] but they to perform, &c. whereby, &c. [as in second Count.] And whereas the said C. D. and E. F. afterwards, to wit, on the first of December, in the year last aforesaid, at, &c. aforesaid, were indebted to the said A. B. in fifty pounds of lawful, &c. for the demorage of a certain ship or vessel of the said A. B. by them the said C. D. and E. F. before that time retained and used with divers goods, wares, and merchandizes on board the said last-mentioned ship or vessel on demorage for a long time, to wit, for the space of ten days then elapsed, and at the special instance, &c. and being so indebted, &c. And whereas afterwards, to wit, &c. in consideration that the said A. B. at the like special instance, &c. had before that time permitted the said C. D. and E. F. to retain and use a certain other ship or vessel of him the said A. B. with divers goods, &c. on board of the said last-mentioned ship, or, &c. on demorage, &c. and that they the said C. D. and E. F. had, according to that permission, retained and used the same in manner last aforesaid for a long time, to wit, for the space of ten days then elapsed, they the said C. D. and E. F. then and there undertook, &c. to pay him so much money as he reasonably deserved to have for the demorage of the said last-mentioned ship, or, &c. when, &c. and the said A. B. avers, &c. whereof, &c. there had notice, yet, &c. [common conclusion to the two last Counts.]

C. RUNNINGTON.

it was payable, *indorsed the bill* (*vide postea*, as to the necessity of proving first indorsement) to D. and that B. the acceptor had notice of the indorsement, and became liable to pay the money to D. according to the tenor of the bill, and of his acceptance and of the indorsement; and that being so liable, he promised payment accordingly.

(a) If the bill is accepted by B. and he does not pay, and C. has not indorsed it over, and does not chuse to sue B. the acceptor, but A. the drawer, then you must shew the making and acceptance of the bill, and that at the expiration of the time specified in the bill for payment the bill was shewn to B. for payment, and that he was requested to pay, and did not, nor has paid the money, of which A. the drawer had notice, and thereby became liable to pay the bill to C. the payee, when he should be thereto requested; and being so liable, he promised to pay the money accordingly.

If D. the first indorsee *sues* A. the drawer, you must shew the making, acceptance, and indorsement of the bill, notice of the indorsement to the acceptor, presenting the bill to him for payment, and requesting payment; that he has not paid it, that A. the drawer had notice of it, and became liable to pay to D. when requested, and promise of payment, as in the last preceding case.

If any other of the indorsees *sue* A. you must shew the same, as in the last case, and state all the indorsements, notice of the several indorsements to B. the acceptor, and the presenting the bill to him, his refusal to pay, notice to the drawer, his being liable to pay, and promise; and when you shew that B. the acceptor has not paid, you must shew that neither of the several persons who indorsed the bill before it came to the plaintiff have paid the bill; therefore A. the drawer is liable upon request.

(b) If an indorsee *sues* any of the indorsers who indorsed before it came to the plaintiff, you must shew the same.

If the bill is indorsed before it is accepted, and the person on whom drawn has refused to accept, and the drawer or any of the indorsees *is* sued, you must shew the bill was indorsed the day it was made, and that after it was indorsed to the plaintiff, he afterwards, to wit, on same day and year, presented the bill to B. on whom drawn, for acceptance, and requested him to accept the bill and pay it, according to the tenor of the bill, and of the indorsements, that he refused to accept the bill, or pay it, and therefore the defendant became liable to pay, *according to the tenor of the bill and the indorsements*, and that defendant promised to pay accordingly. In this case, you say he is liable to pay *according to the tenor of the bill and the indorsements*; but if it is against the drawer or indorser, where the bill has been accepted, and the acceptor has refused payment, you say he became liable to pay *when requested*. For in the first case the bill is supposed to come back to defendant before it is due, and that he says, "I'll pay you the bill according to the tenor," that is, when due, the bill not being due at that time. In the other case, the bill does not come back to the defendant *still after it is due*, and then he is supposed to promise to pay the money when plaintiff desires him to pay it, that is, when requested,

(a) *Rushton against Alpinall, Dougl. 630.* requires the same ceremony, where the indorsee *sues* the indorser, and determines that the want of it is error, and not cured by verdict.

(b) By the case of *Millard v. Mayor,*

Dougl. 55. it is determined, that on refusal to accept, the drawer became immediately liable to pay, though the bill be not due; so I apprehend would any indorser, by parity of reason.

In the case of notes it is nearly the same, only there they are drawers and indorsers that are sued as defendants, for there is not any acceptor, a note being where one man promises to pay a sum of money to another person, or to his order or to that person, or to his order. But bills, as before observed, are drawn by one man upon another, payable to a third person or his order, or to the person who draws it or his order, or to his order only; and when it is accepted, he who drew it payable to himself or order, or to his order, indorses it over to a third person.

To bills of exchange the parties are liable by the law, usage, and custom of merchants, therefore that is mentioned in the declaration. But notes are indorsible and suable by indorsees, by virtue of an act of parliament or statute; and therefore in a declaration on a note it is said, *by reason whereof, and by force of the statute in such case made and provided,* the defendant became liable to pay; and being liable, promised payment. 3. & 4. Anne, c. 9.

A bill to pay out of his *growing subsistence* is not good within the custom of merchants: so to pay so much money out of his rent. *Josceline and Lassere, Fort. 281.* It is more an *authority* than a bill of exchange, *Ch. J. Parker*: and though it be no good bill of exchange, yet if it be a good consideration to raise the express promise upon, the declaration will be good. There is no necessity in a bill of exchange to say *value received*. *Byre, J.* said the same. And it is not necessary to have *three* persons to make a good bill of exchange; for a man may draw a bill on himself; but it is always taken to be *for a certain sum*, and the party takes on himself to pay *at all events*.

A bill drawn by a man upon himself may be considered as tantamount to an acceptance by him; and after tender and refusal by him of payment, an action will lie.

Lord Mansfield held, that where a second, third, or other subsequent indorsee sues upon a bill or note, you need only prove the indorsement of the payee and your next immediate indorser; but *Buller, J. contra*, where you state all you must prove all as stated.

Qu. Where the acceptor, or, on his non-payment, the drawer, on the bill with four or five indorsements being shewn for payment, promises payment, or does anything which implies an admission of them, does not by that *wave* his right to object to your not being able to prove them? See *Sayer Rep. 223. Hanky v. Wilson.*

It is not absolutely necessary to say, "*super se assumpsit*," for the law raises a promise. *Salk. 128. Str. 214.*

If a bill drawn *twenty-eighth December* at two months it must it seems be paid *third March*, allowing for the *three days of grace*, so must a bill drawn *thirtieth December* at two months; for in the latter case, by the custom of merchants, the two odd days in December *shall be dropped* in the account, for the sake of *uniformity*. This is so considered by the bankers themselves.

ON BILLS OF EXCHANGE.

INLAND, BY DRAWER.

Drawer v. Acceptor on a bill returned by payee.

Bill not negotiated.

FOR that whereas, at the several and respective times hereafter mentioned, the said plaintiff and defendant, and also one A. B. were persons residing, &c. and being so resident, &c. he the said plaintiff, on, &c. at, &c. according to the custom, &c. from time, &c. made his certain bill of exchange in writing, his own proper hand being thereto subscribed, the said bill bearing date, &c. then and there directed the said bill to the said defendant by the name and description of, &c. ; and by the said bill then and there required the said defendant, &c. and then and there delivered the said bill to the said A. B. which said bill of exchange the said defendant afterwards, to wit, on, &c. at, &c. upon sight thereof accepted, according to the said custom, &c. : and the said plaintiffs aver, that the said A. B. not having, at any time after the said acceptance of the said bill by the said defendant as aforesaid, indorsed over or negotiated the said bill, or ordered or appointed the money therein specified, or any part thereof, to be paid or payable to any other person or persons whatsoever ; the the said A. B. afterwards, and after the end and expiration of the said twenty-six days in the said bill specified, and thereby appointed for the payment of the money therein mentioned, to wit, on, &c. at, &c. shewed and presented the said bill to said defendant for payment of the money therein specified, and then and there required him to pay the same to her the said A. B. according to the tenor and effect of the said bill, and of his aforesaid acceptance thereof ; but the said (plaintiff) in fact further says, that he the said (defendant) did not, when the said bill was so shewn and presented to him as aforesaid, or at any other time whatsoever, pay to the said A. B. the said sum of money in the said bill specified, or any part thereof, but then and there wholly refused and neglected so to do : whereupon the the said A. B. afterwards, to wit, on, &c. at, &c. returned the said bill to the said (plaintiff), and called upon him for the payment of the money therein specified ; by reason whereof, and of the aforesaid custom and law of merchants, he the said (plaintiff) was afterwards, to wit, on, &c. at, &c. forced and obliged to pay, and did pay, to the said A. B. the said sum of, &c. in the said bill specified, whereof the said defendant then and there had notice ; by means of which said several promises, and by force of the aforesaid custom and law of merchants, he the said defendant became liable to pay to the said plaintiff the said sum of, &c. in the said bill specified, when he the said defendant would be thereto afterwards requested ; and being so liable, he the said defendant, in consideration thereof assumpsit accordingly. (A Count for goods sold and money lent and advanced, had and received ; account stated ; and common conclusion) (a).

(a) See similar precedent post. 230. with Mr. Lewes's Opinion.

9 FOR that whereas the said (plaintiff) heretofore, to wit, on, &c. at, &c. according to the custom, &c. from time, &c. made and drew, &c. the said bill bearing date, &c. and then and there directed the said bill to the said defendant by, &c. and by the said bill required the said defendant after date to pay to the order of him the said plaintiff the sum of, &c.: and the said plaintiff avers, that the said defendant afterwards, to wit, on, &c. at, &c. upon sight of the said bill, accepted the same according to the said custom in that particular, and that the same was afterwards, and before payment of the money therein specified, or of any part thereof, in due manner, and according to the custom, &c. in that particular, indorsed over and negotiated; to wit, at, &c. whereof the said defendant there had due notice: and the said plaintiff in fact further saith, that the said bill of exchange having been so indorsed and negotiated as aforesaid, was afterwards, and at the end and expiration of the time appointed for the payment of the money therein specified, to wit, on, &c. at, &c. shewn, and presented to the said defendant for payment of the money therein mentioned, according to the tenor, &c. of the said bill, his aforesaid acceptance thereof, and the aforesaid negotiation of the same; yet the said plaintiff in fact further saith, that he the said defendant did not, when the said bill was so shewn and presented to him as aforesaid, or at any other time whatsoever, pay the money therein specified, or any part thereof, but therein wholly failed and made default, and refused and neglected so to do, whereby and by means whereof the said bill of exchange was afterwards, to wit, on, &c. at, &c. and according to the custom, &c. in that respect, returned to him the said plaintiff, and he the said plaintiff was then and there called upon for, and forced and obliged to pay, the money therein specified; whereof the said defendant afterwards, to wit, on, &c. at, &c. had notice: by means of which several promises, and by force of the custom and law of merchants, he the said defendant became liable to pay to the said plaintiff the said sum of money in the said bill named, on request, &c.: and being so liable, &c. [assumpsit accordingly.] And whereas the said plaintiff on, &c. at, &c. according to the custom of merchants from time, &c. made, &c. as before: which said last mentioned bill of exchange the said defendant afterwards, and before the payment of the money therein specified, or of any part thereof, to wit, on, &c. at, &c. upon sight thereof accepted, according to the custom, &c. And the said plaintiff avers, that he the said plaintiff not having at any time before, or at the end and expiration of the time appointed for the payment of the money in the said last mentioned bill mentioned, indorsed over or negotiated the same, or ordered or appointed the money therein specified to be paid to any person or persons whatsoever, the said defendant, by force of the custom and law of merchants in that particular, became liable to pay to the said plaintiff the said sum of money in this last mentioned bill specified, according to the nature and effect of the said last mentioned bill, or when be

Drawer v. Acceptor on a bill made payable to the order of drawer, and returned by indorsee.

2d Count stating that the bill never was negotiated

1st Count states that the bill was negotiated and returned for non-payment by acceptor.

1d Count states the bill was never negotiated.

ASSUMPSIT GENERAL.—ON BILLS OF EXCHANGE.

the said (defendant) should be thereunto afterwards requested; whereof the said defendant, to wit, at, &c. there had due notice; and being so liable, he the said defendant, in consideration thereof, afterwards, and at the end and expiration of the time appointed for the payment of the money in the said last mentioned bill specified, to wit, on, &c. at, &c. undertook, &c. accordingly—[the common Counts, and then the following conclusion] Yet the said defendant, not regarding, &c. but contriving, &c. hath not yet paid, &c. although, &c. and although the said plaintiff hath not, at any time since the making of the said second promise and undertaking above mentioned, indorsed over or negotiated the said bill of exchange in that promise and undertaking mentioned, or ordered or appointed the money therein specified, or any part thereof, to be paid to any person or persons whatsoever, but, &c.

Drawer v. Acceptor.

(1) *White v. Ledwick*, B. R. Stat. 25 Geo. III. *Macleod v. Snee*, Ld. Raym. 1481. Fort. 282. 3 Mod. 267. 1 Barnard, 88. Lutw. 889. 1 Mod. Ent. 310. 1 Show. 497. (2) *Bur.* 2671, 2672, 1 T. R. 713. *Marius*, 2d Ed. 12, 13. *Beawes*, f. 266. 1st Ed. 453. *Molloy*, b. 2. c. 10. f. 16. *Beawes*, f. 49. 1st Ed. p. 400. *Marius* 2d Ed. 12. 13.

FOR that whereas the said plaintiff heretofore, to wit, on, &c. at, &c. according to the custom of merchants, made his certain bill of exchange in writing, his own proper hand being thereto subscribed, the said bill bearing date, &c. and then and there directed the said bill to the said defendant, by the name and description of, &c. and by the said bill required the said defendant, two months after the date of the said bill, to pay to the said plaintiff's order fifty-eight pounds (1) value delivered in tongues by him said plaintiff (2); which said bill of exchange the said defendant afterwards, to wit, on, &c. at, &c. upon (a) sight thereof, accepted, according to the said custom of merchants, whereby the said defendant became liable to pay the said sum of money in the said bill specified, according to the tenor, &c. of said bill, and his aforesaid acceptance thereof; and being so liable, &c. (Promise to pay, according to the tenor, &c. of said bill, and his aforesaid acceptance thereof.) And the said plaintiff avers, that he the said plaintiff has not at any time indorsed over or negotiated the said bill, but the same is still in the hands and possession of him the said plaintiff, not indorsed over or negotiated, &c.

(a) See Bayley on Bills of Exchange, 57. where the acceptance need not be stated, except in actions against acceptor, or on bills payable within a limited time after sight.

Drawer v. Acceptor of a bill retained by payee.

LONDON, ff. Thomas Hodges complains of Anselm Jones, being in the custody of, &c. in a plea of trespass on the case, &c. for that whereas, at the several and respective times hereafter mentioned, the said Thomas and Anselm, and also one O. Shortland, were persons residing, trading, and using commerce within this kingdom, to wit, at London aforesaid, in the parish of, &c.; and

and being so resident, trading, and using commerce, he the said Thomas heretofore, to wit, on the first of January A. D. 1780, at London aforesaid, in the parish and ward aforesaid, according to the custom of merchants from time immemorial used and approved of within this kingdom, made his certain bill of exchange in writing, his own proper hand being thereto subscribed, the said bill bearing date the day and year aforesaid, and then and there directed the said bill to the said Anselm by the name and description of Mr. A. Jones, Sidenham, Kent, and by the said bill required the said Anselm, twenty-six days after date, to pay to the said O. Shortland, by the name and description of Mrs. Shortland, or order, eight pounds six shillings, for value in account of him the said Thomas Hodges, and then and there delivered the said bill to the said O. Shortland; which said bill of exchange the said Anselm afterwards, to wit, on the day and year aforesaid, at London aforesaid, in the parish and ward aforesaid, upon sight thereof, accepted, according to the said custom of merchants; and the said Thomas avers, that the said O. Shortland not having, at any time after the said acceptance of the said bill by the said Anselm as aforesaid, *indorsed over or negotiated* the said bill, or ordered or appointed the money therein specified, or any part thereof, to be paid or be payable to any other person or persons whatsoever, she the said O. Shortland afterwards, and at the end and expiration of the said twenty-six days in the said bill specified, and thereby appointed for the payment of the money therein mentioned, to wit, on the thirtieth of January A. D. 1780 aforesaid, at London aforesaid, in the parish and ward aforesaid, shewed and presented the said bill to the said Anselm for payment of the money therein specified, and then and there required him to pay the same to her the said O. Shortland, according to the tenor and effect of the said bill, and of his aforesaid acceptance thereof: but the said Thomas in fact further saith, that he the said Anselm did not, when the said bill was so shewn and presented to him as aforesaid, or at any other time whatsoever, pay to the said O. Shortland the said sum of money specified in the said bill, or any part thereof, but then and there refused and neglected so to do; whereupon she the said O. Shortland afterwards, to wit, on the day and year aforesaid, at London aforesaid, in the parish and ward aforesaid, returned the said bill to the said Thomas, and called upon him for payment of the money therein specified; by reason whereof, and of the aforesaid custom and the law of merchants, he the said Thomas was afterwards, to wit, on the day and year last aforesaid, at London aforesaid, in the parish and ward aforesaid, forced and obliged to and did pay to the said O. Shortland the said sum of eight pounds six shillings in the said bill specified, whereof the said Anselm then and there had notice: by means of which several premises, and by force of the aforesaid custom and the law of merchants, he the said Anselm became liable to pay to the said Thomas the said sum of eight pounds six

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shillings in the said bill specified, when he the said Anselm should be thereto afterwards requested; and being so liable, he the said Anselm, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at London aforesaid, in the parish and ward aforesaid, undertook and faithfully promised the said Thomas to pay him the said sum of eight pounds six shillings in the said bill specified, when he the said Anselm should be thereto afterwards requested. (Add two Counts for goods sold and delivered; one for money laid out and money lent, &c. had and received; account stated; and common conclusion.)

Y. LAWES.

If it were not for a modern determination (a) against me, I should be inclined to think the first Count of this Declaration substantially bad; nor can it in any manner be supported but upon the custom of merchants, which, however convenient, is certainly repugnant to the tenor of the contract; for, upon the face of the bill, who are the persons to whom it is to be paid, and in what capacity must they respectively claim? Certainly, as payee or indorsee. Now who or what

is the present plaintiff? He is not payee, because there is another expressly appointed by name, i. e. Mrs. Shortland; neither is he indorsee, for Mrs. Shortland has never negotiated the bill. But whether the Count upon the bill be good or bad, it may certainly be given in evidence, upon either of the common Counts, for money paid, laid, and received, or upon the account stated, in case the plaintiff shall be unable to prove the fact of the acceptance. Y. LAWES.

(a) Symonds v. Parmenter and Barrow, 1. Wils. 185.

Drawn v. Accepter of a bill retained by indorser of payee.

MIDDLESEX, ss. Samuel Agar complains of John May, being, &c. for that whereas the said Samuel Agar heretofore, to wit, on the fourth day of January A. D. 1782, at Westminster, in the county of Middlesex aforesaid, according to the custom of merchants from time immemorial used and approved of within this kingdom, made his certain bill of exchange in writing, his own proper hand being thereto subscribed, and the said bill bearing date the day and year aforesaid, then and there directed to the said John May, by the name and description of, &c. and by the said bill requested the said J. May, seven days after the date of the said bill, to pay to one Michael Keame or order the sum of five pounds and five shillings, and then and there delivered the said bill to the said M. Keame: and the said Samuel Agar avers, that although the said John May afterwards, to wit, on the day and year aforesaid, at Westminster aforesaid, accepted the aforesaid bill of exchange, according to the said custom of merchants in that particular; and although the said bill of exchange was afterwards, and after the end and expiration of the said seven days therein mentioned and thereby appointed for the payment of the money therein specified, to wit, on the fourteenth day of January in the year 1782 aforesaid, at Westminster aforesaid, shown and presented to him the said J. May for payment of the money therein specified, according to the tenor and effect of the said bill, and his aforesaid acceptance thereof; yet he the said

Samuel

INLAND, BY DRAWER.

Samuel Agar in fact further saith, that he the said John May did not, when the said bill was so shewn and presented to him as aforesaid, or at any other time whatsoever, pay the money therein specified, or any part thereof, according to the tenor and effect of the said bill, and his aforesaid acceptance thereof, but therein wholly failed and made default, and refused and neglected so to do; whereby and by means whereof the said bill of exchange was afterwards, to wit, on the day and year last aforesaid, at Westminster aforesaid, and according to the custom of merchants in that respect, returned to him the said Samuel Agar, and he the said Samuel Agar was then and there called upon for, and forced and obliged to pay, the money therein specified, whereof the said John May then and there had notice: by means of which several premises, and by force of the aforesaid custom and the law of merchants, he the said John May became liable to pay to the said Samuel Agar the said sum of money in the said bill specified; and being so liable, he the said John May, in consideration thereof, afterwards, to wit, on, &c. at, &c. undertook, &c. the said Samuel Agar to pay him the said sum of money in the said bill specified, when he the said John May should be thereto afterwards requested, (Money lent, money laid out, money had and received; account stated; and common conclusion.)

FOR that whereas the said plaintiff heretofore, to wit, on the thirty-first of October A. D. 1780, at London aforesaid, in the parish of St. Mary le Bow, in the ward of Cheap, according to the custom of merchants from time immemorial used and approved of within this kingdom, made his certain bill of exchange in writing, his own proper hand being thereto subscribed, and the said bill bearing date the day and year aforesaid, then and there directed to the said defendant by the name and description of Mr. Richard Roberts, No. 72, Houndsditch, and by the said bill required the said defendant, three months after the date of the said bill, to pay to the order of him the said plaintiff, the sum of fifty pounds value received; and the said plaintiff avers, that the said defendant afterwards, to wit, on the day and year aforesaid, at &c. aforesaid, accepted the aforesaid bill, according to the custom of merchants in that particular, and that the same was afterwards, and before the payment of the money therein specified, or any part thereof, in due manner, and according to the custom of merchants in that particular, *indorsed over and negotiated*, to wit, at London aforesaid, in the parish and ward aforesaid, whereof the said defendant had due notice: and the said plaintiff in fact further saith, that the said bill of exchange having been so indorsed and negotiated as aforesaid, was afterwards, and at the end and expiration of the time appointed for the payment of the money therein specified, to wit, on the third of February A. D. 1781, at, &c. aforesaid, shewn and presented to the said defendant for payment

Drawer v. Acceptor of a bill made payable to the order of drawer retained by indorsee. 1st Count states that the bill was negotiated and retained for non-payment by acceptor.

of the money therein specified, according to the tenor and effect of the said bill, his aforesaid acceptance thereof, and the aforesaid negociation of the same; yet he the said plaintiff in fact further saith, that he the said defendant did not, when the said bill was so shewn and presented to him as aforesaid, or at any other time whatsoever, pay the money therein specified, or any part thereof, but therein wholly failed and made default, and refused and neglected so to do; whereby, and by means whereof, the said bill of exchange was afterwards, to wit, on the day and year last aforesaid, at London aforesaid, in, &c. aforesaid, and according to the custom of merchants in that respect, returned to him the said plaintiff, and he the said plaintiff was then and there called upon for, and forced and obliged to pay the money therein specified; whereof he the said defendant afterwards, to wit, on, &c. last aforesaid, had notice, to wit, at, &c. aforesaid: by means of which several premises, and by force of the custom and the law of merchants, he the said defendant became liable to pay to the said plaintiff the said sum of money in the said bill mentioned, upon request; and being so liable, &c. assumpsit accordingly. And whereas the said plaintiff, on the said thirty-first of October in the year 1780 aforesaid, at, &c. aforesaid, according to the custom of merchants from time immemorial used and approved of within this kingdom, made his certain other bill of exchange, &c. &c. [as in first Count, till you have set out the bill, then go on thus] which said bill of exchange the said defendant afterwards, and before the payment of the money therein specified, or of any part thereof, to wit, on the day and year last aforesaid, at, &c. aforesaid, upon sight thereof accepted, according to the custom, &c.: and the said plaintiff avers, that the said plaintiff *not having at any time before, or at the end and expiration of the time appointed for the payment of the money in the said last mentioned bill specified, indorsed over or negotiated the same, or ordered or appointed the money therein specified to be paid to any person or persons whatsoever, the said defendant, by force of the custom and the law of merchants in that particular, became liable to pay to the said plaintiff the said sum of money in the said last mentioned bill specified, whereof the said (defendant) had due notice; and being so liable, he the said defendant, in consideration thereof, afterwards, and at the end and expiration of the time appointed for the payment of the money in the said last mentioned bill specified, to wit, on the third day of February A. D. 1781 aforesaid, at, &c. aforesaid, undertook, &c. to pay, upon request, &c. (money laid out, &c. money had and received, and account stated): Yet the said defendant, not regarding, &c. but contriving, &c. hath not as yet paid, &c. (although so to do this the said defendant was requested by the said plaintiff afterwards, to wit, on, &c. and often afterwards, to wit, at, &c. aforesaid; and although the said plaintiff hath not, at any time since the making of the said second promise and undertaking above mentioned, indorsed over or negotiated the said bill of exchange in that promise and undertaking mentioned, or ordered or appointed*

ad Count states
that the bill was
never negotiat-
ed,

Conclusion.

appointed the money therein specified, or any part thereof, to be paid to any person or persons whatsoever,) but he the said defendant to do this hath hitherto wholly refused, and still refuses so to do, to the said plaintiff his damage of, &c. Suit, &c.

LONDON, J. E. J. P. T. G. and R. K. assignees of the debts, goods, and effects which were of John C. surviving partner of James C. deceased, being a bankrupt according to the form and effect of the several statutes made and now in force concerning bankrupts, complain of T. W., being, &c. of a plea of trespass on the case; for that whereas the said James and John C. which said James died before the bankruptcy of the said John C. leaving the said John C. him surviving, in the lifetime of him the said James, and before the said John C. became bankrupt, to wit, on the fourth of June A. D. 1784, at London aforesaid, to wit, in the parish of St. Mary le Bow, in the ward of Cheap, according to the custom of merchants from time immemorial used and approved of within this kingdom, made a certain bill of exchange in writing, the proper hand of one of them, on their (3) joint account, and in their (3) copartnership style and firm, (to wit, James and John C.) being thereto subscribed, bearing date the day and year aforesaid, and then and there directed the said bill to the said Thomas W., by the name and addition of Mr. Thomas W. 36, Cornhill, and thereby required the said Thomas W. three months after date, to pay to their order twenty-five pounds thirteen shillings and sixpence, value received of the said James and John C. which he the said Thomas W. afterwards, to wit, on the day and year aforesaid, at L. aforesaid, in the parish and ward aforesaid, upon sight thereof, accepted, according to the said custom: and the said Enos John, Thomas G. and Richard, assignees as aforesaid, aver, that the said bill afterwards, and before the payment of the money therein specified, or any part thereof, was in due manner, and according to the custom of merchants, indorsed and negotiated, to wit, at L. aforesaid, in the parish and ward aforesaid; and that the said bill, having been so indorsed and negotiated as aforesaid, was afterwards, and at the end and expiration of the time appointed by the said bill for the payment of the money therein specified, to wit, on the seventh of September in the year 1784 aforesaid, at London aforesaid, in the parish and ward aforesaid, shewn and presented to the said Thomas W. for payment of the money therein specified, according to the said custom, and the said Thomas W. then and there had notice of the said indorsement and negotiation thereof, and was then and there required to pay the said sum of money therein specified, according to the tenor and effect of the said bill, and of his said acceptance thereof, and of the said indorsement and negotiation of the same; but that the said Thomas W. did not, nor would at the said time when the said bill was so shewn and presented to him for payment thereof as aforesaid, or at any time afterwards, pay the said sum

Assumpsit in B. R. by the Assignees of a surviving partner bankrupt, drawers of a bill of exchange, against Accceptor. 1st Count, upon a bill negotiated.

(3) Lord Raym.
175. 2484.
Doug. 630.

ASSUMPSIT GENERAL.—ON BILLS OF EXCHANGE.

sum of money therein specified, or any part thereof, but wholly refused and neglected so to do; and thereupon the said James and John C. in the lifetime of the said James, and before the said John C. became a bankrupt, as drawers of the said bill, by reason of such neglect and refusal of the said Thomas W. as aforesaid, were afterwards, to wit, on the first of October in the year 1784, at London aforesaid, in the parish and ward aforesaid, forced and obliged to, and did then and there necessarily pay to the holder of the said bill the said sum of money therein specified; whereof the said Thomas W. afterwards, to wit, on the day and year last aforesaid, at L. aforesaid, in the parish and ward aforesaid, had notice: by means of which said several premises, and by force of the said custom, and by the law of merchants, the said Thomas W. then and there became liable to pay to the said James and John C. the said sum of money in the said bill specified, when he the said Thomas W. should be thereto afterwards requested; and being so liable, he the said Thomas W. in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at L. aforesaid, in the parish and ward aforesaid, undertook, and faithfully promised the said James and John C. in the lifetime of the said James, and before the said John C. became bankrupt, to pay them the said sum of money in the said bill specified, when he the said Thomas W. should be thereto afterwards requested. And whereas the said James and John C. in the lifetime of the said James, and before the said John C. became bankrupt, to wit, on the fourth day of June in the year 1784 aforesaid, at L. aforesaid, in the parish and ward aforesaid, according to the custom of merchants from time immemorial used and approved of within this kingdom, made a certain other bill of exchange in writing, the proper hand of one of them, on their joint account, and in their copartnership style and firm, (to wit, James and John C.) being thereto subscribed, bearing date the day and year last aforesaid, and then and there directed the said last mentioned bill to the said Thomas W. by the name and addition of Mr. Thomas W. 36, Cornhill, and thereby required the said Thomas W. three months after date, to pay to their order twenty-five pounds thirteen shillings and sixpence, value received of the said James and John C. which said last mentioned bill he the said Thomas W. afterwards, to wit, on the day and year last aforesaid, at L. aforesaid, in the parish and ward aforesaid, upon sight thereof, accepted, according to the said custom: and the said Enos John, Thomas G. and Richard, assignees as aforesaid, aver, that the said last mentioned bill *not having been at any time indorsed and negotiated* for the payment of the money therein specified, ordered or appointed to be made to any person or persons whomsoever, the said Thomas W. by force of the said custom, and by the law of merchants, afterwards, and at the end and expiration of the time appointed by the said last mentioned bill for the payment of the money therein specified, to wit, on the said seventh of September in the year 1784 aforesaid, at L. aforesaid, in the parish and ward aforesaid, became liable to pay

ad Count, upon
a bill not nego-
ciated.

pay the same to the said James and John C. in the lifetime of the said James, and before the said John C. became bankrupt; whereof the said Thomas W. afterwards, to wit, on the day and year last aforesaid, at London aforesaid, in the parish and ward aforesaid, had notice; and being so liable, he the said Thomas W. in consideration thereof, then and there undertook, and faithfully promised the said James and John C. in the lifetime of the said James, and before the said John C. became bankrupt, to pay them the said sum of money in the said last mentioned bill specified, when he the said T. W. should be thereto afterwards requested. (Add a Count for work and labour, and quantum meruit.) Yet the said Thomas W. not regarding his said several promises and undertakings so by him made in manner and form aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said James and John C. in the lifetime of the said James, and the said John C. surviving partner as aforesaid, after the death of the said James, and before the said John C. became bankrupt, and the said Enos John, Thomas G. and Richard, assignees as aforesaid, since the bankruptcy of the said John C. in this behalf hath not paid the said several sums of money, or any part thereof, to them, or any or either of them, (although to pay the same be the said Thomas W. was oftentimes requested, as well by the said James and John C. in the lifetime of the said James, as by the said John C. surviving partner as aforesaid, after the death of the said James, and before the said John C. became bankrupt, and also by the said Enos John, Thomas G. and Richard, assignees as aforesaid, since the bankruptcy of the said John C. to wit, on the first of November A. D. 1785, to wit, at L. aforesaid, in the parish and ward aforesaid,) but to pay the same, or any part thereof, to them, or any or either of them, he the said Thomas W. hath hitherto wholly refused, and still refuses, to pay the same, to the damage of the said Enos John, Thomas G. and Richard, assignees as aforesaid, of eighty pounds; and therefore they bring suit, &c. Pledges, &c.

Conclusion by
Assignees of a
surviving part-
ner bankrupt.

LONDON, ff. If Isaac H. shall make you secure, &c. then Declaration by
put, &c. Joseph F. and Thomas G. late of London. merchants, original in B. R.
so that they be before the lord the king on the morrow of All Souls, by Drawer on
wheresoever, &c. to shew that (a) "and" whereas heretofore, two inland bills
to wit, on the second day of July, "first day of August," in the of exchange, for
year of Our Lord 1788 "aforesaid," at Bradford "aforesaid," to different sums on
to wit, at London aforesaid, in the parish of St. Mary le Bow in the different dealers,
"and" ward of Cheap "aforesaid," the said Isaac, who then and against the Ac-
there carried on trade and commerce under the "said" style and ceptor.
firm of H. and T. according to the "said" usage and custom of
merchants from time immemorial used and approved of within this
kingdom, made a certain "other" bill of exchange in writing, sub-
scribed with his own proper hand in the style or firm aforesaid,
bearing date the day and year "last" aforesaid, and then and there

(a) In this first Count omit the words within inverted commas.

directed

ad Count, stating an acceptance generally.

aforesaid, upon the said defendants, by the name and description of, &c. and thereby required the said defendants, three weeks after the date thereof, to pay to the order of him the said plaintiff eleven pounds value, on account with him the said plaintiff; which said bill of exchange he the said Charles for himself, and the said Thomas in that behalf, afterwards, and before the time appointed for the payment of the money therein mentioned, to wit, on, &c. at, &c. duly accepted, according to the custom of merchants, for payment of the money therein mentioned, according to the tenor and effect of the said bill; whereby, and by means of which said several premises, and according to the said custom and the law of merchants, they the said defendants became liable to pay the said sum of money in the said bill of exchange mentioned, according to the tenor and effect of the said bill: and the said plaintiff avers, that the said James did not, at any time before, nor at or after the time appointed by the said bill for payment of the money therein mentioned, indorse the same, or order the contents thereof to be paid to any person or persons whatsoever, to wit, at, &c. whereof they the said defendants afterwards, and whilst the said bill was unindorsed, to wit, on, &c. there had notice: in consideration of which said several premises, they the said defendants afterwards, to wit, on, &c. at, &c. undertook, and then and there faithfully promised the said plaintiff, to pay him the said sum of money in the said bill mentioned, when they the said defendants should be thereunto afterwards requested. And whereas the said plaintiff heretofore, to wit, on, &c. at, &c. according to the custom of merchants, made and drew his certain other bill of exchange in writing, bearing date the day and year aforesaid, upon the said defendants, by the name and description of, &c. and thereby required the said defendants, three weeks after the date, to pay to the order of him the said plaintiff eleven pounds value, on account with him the said plaintiff; which said last-mentioned bill of exchange afterwards, and before the time thereby appointed for the payment of the money therein mentioned, to wit, on, &c. at, &c. was duly accepted by and on behalf of the said defendants, according to the said custom; whereby, and by reason of which said several premises, and according to the custom and by the law of merchants, they the said defendants became liable to pay the said sum of money in the said last-mentioned bill specified, according to the tenor and effect of the said bill: and the said plaintiff avers, that he the said plaintiff did not at any time before or after the time appointed by the said bill for the payment of the money therein specified, indorse the said bill, or order the money therein mentioned to be paid to any person or persons whatsoever, to wit, at, &c. whereof the said defendants afterwards, and after the time appointed by the said last-mentioned bill for payment of the money specified, and whilst the said last-mentioned bill was unindorsed, to wit, on, &c. at, &c. had notice: in consideration of which said several premises, they the said defendants afterwards, to wit,

on.

on, &c. at, &c. undertook, &c. &c. (Add Counts for goods sold, &c.; common money Counts; and common conclusion, with this addition, after stating a request): And although the said plaintiff hath not at any time since the making the said promises and undertakings in the said first and second Counts above mentioned, indorsed over or negotiated the said bills of exchange, or either of them, in those promises and undertakings mentioned, or appointed the money therein, or in either of them specified, to be paid to any person or persons whatsoever, but, &c. &c.

T. BARROW.

AND whereas the said Thomas, on the behalf of himself and the said Charles his copartner in trade, by one G. Smith, their (a) *servant* in that behalf, on the tenth day of February A. D. 1793, at London, to wit, at Westminster, in the county of Middlesex, according to the usage and custom of merchants, *procured* to be drawn and made their certain bill of exchange in writing, bearing date the day and year aforesaid, upon the said Thomas Faulding, by the name and description of Messrs. Thomas Faulding and Co. Coventry-street, and thereby required the said Thomas Faulding to pay to the order of him the said G. Smith, six weeks after the date of the said bill, seventy-two pounds fifteen shillings and six pence, value received of the said Charles and Thomas Tatlock; which said bill of exchange he the said Thomas Faulding afterwards, to wit, on the day and year aforesaid, at Westminster aforesaid, in the county aforesaid, according to the usage and custom of merchants in that particular, accepted; by reason whereof, and by force of the custom and law of merchants, the said T. F. became liable to pay to the said Charles and Thomas Tatlock the said sum of money in the said bill specified, according to the tenor and effect of the said bill, and of his aforesaid acceptance thereof; and being so liable, &c. (assumpsit accordingly.)

T. BARROW.

LONDON, *J. H. P.* late of London, merchant, was attached to answer T. S. in a plea of trespass on the case, &c. and whereupon the said T. S. by A. B. his attorney, complains, that whereas the said H. and L. B. late of London, merchant; *which said L. by due process of law, had in the court of the said lord the king, before the king himself, was outlawed, and still is outlawed, at the suit of the said T. in the same plea, as by the record thereof, now remaining in the said court here in full force, more fully appears,* on the first day of April A. D. 1742, at L. to wit, in the parish of St. Mary-le-Bow, in the ward of Cheap, was indebted. (Counts for work and labour, and quantum meruit; money laid out and expended, lent and advanced, had and received.) And whereas the said J. on the twenty-eighth day of June A. D. 1749, at L. aforesaid, in the parish and ward aforesaid, according to the usage and custom of merchants, made his certain bill of exchange

Declaration by Partners on an inland bill of exchange drawn by a Clerk by procuration of one of the copartners, against the Acceptor, a single trader, but was drawn upon as under a firm, to pay to the order of the Clerk. See Bailey on Bills of Exchange, 54. (a) Lord Raym. 175. 1484. Doug. 630. 12. Mod. 569. Comb. 450. 12. Mod. 346. 10. Mod. 110.

Declaration by original on a bill of exchange by Drawer v. Acceptor's two partners, one being outlawed, payable at Madrid, and protested per quod, was obliged to pay bill with interest, &c. charges, &c.

ASSUMPSIT GENERAL.—ON BILLS OF EXCHANGE.

Acceptance.
Averment of
usage.

Refusal to pay.

Made no order.

Protest for non-
payment.

Conclusion.

exchange in writing, his own hand being therunto subscribed, bearing date the same day and year, and directed the said bill to the said H. and L. then being resident and using commerce at Bilboa in foreign parts, to wit, in Spain, and thereby requested the said H. and L. *at usance*, to pay that his first bill of exchange at Madrid in Spain aforesaid, to the order of J. E. Clive and Co. dollars 4000 in gold or silver, as to the exchange known to them that day, value in account with the said gentlemen as per advice; which said bill of exchange afterwards, that is to say, on the tenth day of August in the year aforesaid, at Bilboa aforesaid, the said H. and L. who, &c. *accepted*, according to the usage and custom of merchants: and the said T. in fact says, *that an usance between L. aforesaid and Madrid in foreign parts; to wit, in Spain aforesaid, is, and from time whereof the memory of man is not to the contrary hath been, two months: and the said H. and L. who, &c. did not, nor did either of them pay to the said J. E. Clive and Co. the said money contained in the said bill of exchange, nor any part thereof, but refused and neglected to pay the same: whereupon afterwards, to wit, on the twenty-first day of September in the same year, the said J. E. Clive and Co. having made no order concerning the payment thereof, the said bill of exchange, at the request of the said J. E. Clive, was protested at Madrid aforesaid, according to the usage and custom of merchants; upon the non-payment of the contents thereof; by reason whereof, he the said T. according to the usage and custom of merchants, became liable to pay to the said J. E. C. and Co. the said contents of the said bill of exchange, together with interest, exchange, re-exchange, costs, and damages, which accrued from the delay and retardment of the payment thereof; and being so liable, &c. (paid the contents of the bill,) and the sum of thirty-six pounds fifteen shillings of lawful, &c. with interest, &c. of which, &c. said H. and L. had notice: and by reason, &c. and by force of the usage and custom, &c. they the said H. and L. who, &c. became liable to pay to the said T. the said contents, &c. and the said sum of thirty-six pounds fifteen shillings so paid, &c.; and being so liable, &c. (assumpserunt.) (2d Count on a similar bill for one thousand five hundred dollars, payable in Bilboa, to the order of one M.D. Q.; which defendants accepted. Averment that an usance is two calendar months. Protested, became liable to pay, &c. with interest, &c. amounting to nine pounds eight shillings and seven pence.) Yet, &c. not regarding their said several promises and undertakings, &c. hath not paid, &c. although the said H. and L. who, &c. afterwards, and before the said outlawry pronounced, that is to say, on the said second day of April in the year last aforesaid, and often afterwards, at L. aforesaid, in the parish and ward aforesaid, were requested by the said Thomas to pay the same: but the said H. and L. unto the time of pronouncing the said outlawry against the said L. have wholly refused; and the said H. doth still refuse to pay the same to the said Thomas; and the same are still unpaid, to the damage of the said Thomas of*

one

one thousand three hundred pounds; and thereupon he brings suit, &c.

And the said H. by A. B. his attorney, comes and prays leave Plea Impar-
to imparl thereto, before our lord the king, until from the day of
Easter, in fifteen days, wheresoever our said lord the king shall
be in England, and he has it, &c. the same day is granted to the
said Thomas, &c. At which day, before our said lord the king at
Westminster, comes as well the said Thomas as the said H. by
their said attorneys: and hereupon the said H. prays further leave Further Impar-
to imparl thereto, until the morrow of the Holy Trinity, where-
soever our said lord the king shall then be in England, and he has
it, &c. the same day is given to the said Thomas, &c. At which
day, before our said lord the king, comes as well the said Tho-
mas as the said H. by their said attorneys: and hereupon the said Further Impar-
H. prays further leave to imparl thereto, from the day of St. Mi-
chael, in three weeks, wheresoever our said lord the king should
then be in England, and he has it, &c. the same day is given to
the said Thomas. At which day, before our said lord the king at
Westminster, comes as well the said Thomas as the said H. by
their said attorneys: and hereupon the said H. prays further leave Further Impar-
to imparl thereto, from the day of Easter, in fifteen days, where-
soever our said lord the king should then be in England, and he
has it, &c. the same day is given to the said Thomas, &c. And
now at this day, before our said lord the king at Westminster,
comes as well the said Thomas as the said H. by their said attor-
nies: and the said H. defends the wrong and injury, and says, 1st, That the
that the said Thomas ought not to have or maintain his said action record of out-
against him, because he says that there is *not any record of the*
outlawry of the said L. upon the said writ in the plea aforesaid
alleged in the said declaration; and this the said H. is ready to
verify; wherefore he prays judgment, if the said Thomas ought
to have or maintain his said action against him, &c. And the said
H. for further plea in bar, by leave of the court here in this be-
half granted to him, according to the form of the statute in this
case made and provided, further says, that the said Thomas ought
not to have or maintain his said action against him; because he
says, that the said L. in the said declaration named before and at
the time of the obtaining of the original writ on which the out-
lawry by the declaration is above supposed to be obtained and had
against the said L. and continually from that time hitherto, did
dwell and was commorant, and also before and at the time of
awarding the writ of exigent thereon, and continually from that
time hitherto, did dwell and was commorant, and is now dwelling
and commorant, in parts beyond the seas, and out of the limits of
this realm, to wit, at Bilboa in the kingdom of Spain, in the said
declaration mentioned; and that the county of Cornwall, in this
kingdom, was and is the shire next to the place where the said L.
at the time of the writ of exigent awarded, had his dwelling; and
that

that not any writ of proclamation thereon was awarded, made, or directed to the sheriff of the county of Cornwall; *without this*, that at the time of the obtaining the original writ, or at any time afterwards, the said L. did dwell, or was commorant, or conversant, at London aforesaid, or at any other city, town, or place whatsoever within this kingdom: and this the said H. is ready to verify; wherefore he prays judgment, if the said Thomas ought to have or maintain his said action, in the form aforesaid, against him, &c.

D. POOLE.

Replication, that there is such a record setting forth the original writ.

And the said Thomas prays leave to imparl to the said plea, until the morrow of the Holy Trinity, wheresoever our said lord the king shall then be in England, and he has it, &c. the same day is given to the said H. &c. At which day, before our said lord the king at Westminster, come as well the said Thomas as the said Henry by their said attornies: and hereupon the said Thomas prays of the court here that the said original in this suit filed, and remaining in the said court here, may be set forth here, and it is granted to him: the tenor of which said writ follows in these words, to wit, Geo. the Second, &c. To the sheriffs of London. If Thomas Symmons shall give you security to prosecute his suit, then put, by sureties and safe pledges, H. P. of London merchant, and L. B. late of London merchant, that they be before us on the morrow of the Holy Trinity, wheresoever we shall then be in England, to shew, that whereas the said H. and L. on the first day of April 1742, at London aforesaid, in the parish of St. Mary-le-Bow, in the ward of Cheap, were indebted to the said Thomas, &c. (insert the writ,) to the damage of the said Thomas of one thousand three hundred pounds as he saith, and have ye there the names of the pledges and this writ: witness Thomas Archbishop of Canterbury, and other guardians and justices of the kingdoms, at Westminster, the 13th May in the sixth year of the reign; Jones;—as by the original writ, now remaining assised of record in the said court here at Westminster aforesaid, fully appears. And hereupon the said Thomas for replication saith, that by reason of any thing by the said H. above in pleading alledged, he ought not to be barred from having and maintaining his action aforesaid against him; because, as to the said plea of the said N. first above pleaded, he the said Thomas saith, *that there is such a record of the outlawry* of the said L. upon the said writ in the plea aforesaid, at the suit of the said Thomas, in the said court here remaining, as the said Thomas hath in his said declaration above alledged; and this he is ready to verify by that record, as it appears in the Term of St. Hilary, in the 17th year of the reign of the said lord the king, upon the seventh roll; and the said Thomas prays, that the said Term and roll, by the said court here, may be seen and inspected. And the said Thomas, as to the said plea of the said H. lastly above pleaded, saith, that he ought not to be barred from having his said action against the said H. because the said Thomas saith, that the said plea, by the

Demurrer to said plea.

the said H. lastly above pleaded, and the matters therein contained, are not sufficient in law to bar the said Thomas from having his said action against him; to which plea, in manner and form aforesaid pleaded, and the matter therein contained, the said Thomas hath no need, nor is he by the law of the land in any wise bound to answer: and this, &c.: wherefore, for want of a sufficient plea in this behalf, the said Thomas prays judgment and his damages, by reason of the premises to be adjudged to him, &c.

WILLIAM WYNNE,
RICHARD DRAPER.

And the said H. &c. since he hath above alledged sufficient matter in law in his said plea lastly above pleaded, and because he the said Thomas hath not answered to the said plea of the said H. by him lastly above pleaded, nor hath hitherto in anywise denied the same, the said H. as heretofore prays judgment, if the said Thomas ought to have or maintain his said action thereof against him, &c. And the said H. saith, that the said plea of the said Thomas, in manner and form aforesaid above pleaded, by way of reply to the said plea of the said H. by him first above pleaded, and the matter therein contained, are not sufficient in law for the said Thomas to have and maintain his said action thereof against him; and that he the said H. is not bound nor obliged by the law of the land to make any answer thereto; and this, &c.: wherefore for want of sufficient replication in this behalf, the said H. as before prays judgment; and that the said Thomas may be barred from having or maintaining his aforesaid action thereof against him, &c. Demurrer to replication. And Causes. for causes of this demurrer in law, according to the form of the statute in such cases lately made and provided, the said H. sheweth to the court here these causes following, to wit, for this, that it appears by the said replication, the writ upon which it is above supposed the said L. was outlawed, is not, nor was the same writ upon which the said Thomas hath above in form aforesaid declared against the said H. but another, and variant from the original writ recited in the said declaration of the said Thomas, and for this, that the said declaration is double, uncertain, and wants form.

D. POOLE,

And the said Thomas saith, that the said plea of the said Thomas as in manner aforesaid above pleaded by way of reply to the said plea of the said H. by him first above pleaded, and the matter therein contained, are good and sufficient in law for him the said Thomas to have and maintain his said action thereof against the said H.; which plea, by way of reply, and the matters therein contained, the said Thomas is ready to verify and prove, as the court shall direct. And because the said H. hath not answered the said plea, nor hitherto hath in any wise denied the same, the said Thomas, as before, prays judgment, and his damages by reason of the premises to be adjudged to him, &c. because the court of

Cor. adv. valt.

Continuance.

Judgment for
plaintiff.Writ of inquiry
awarded.

Sheriffs return.

our said lord the king now here is not yet advised about giving judgment of and upon the several premises whereon the said parties have above put themselves on the judgment of the court; therefore day is given to the parties aforesaid to be before our lord until from the day of St. Michael in three weeks, wherefoever he shall then be in England, to hear judgment of and upon the premises, for that the court of our said lord the king at Westminster, is not yet advised, &c. (here insert continuances from Term to Term until from the day of the Holy Trinity in three weeks.) At which day, before our said lord the king come as well the said Thomas as the said H. by their said attorneys; whereupon all and singular the premises being seen, and by the court of our said lord the king now here fully understood, and mature deliberation being thereupon had, it appears to the court of our said lord the king now here, that the plea of the said H. lastly above pleaded, and the matters therein contained, are not sufficient in law to bar the said Thomas from having his said action against him the said H.; and that the said plea of the said Thomas, in manner and form aforesaid above pleaded, by way of reply to the plea of the said H. by him first above pleaded, and the matters therein contained, are good and sufficient in law for him the said Thomas to have and maintain his said action against the said H. as he the said Thomas hath above alledged; by reason whereof the said Thomas ought to recover against the said H. his damages by occasion of the premises; but because it is unknown to the court of our said lord the king now here what damages the said Thomas hath sustained as well by occasion of the premises as for his costs and charges by him about his suit in this behalf expended, the sheriffs are commanded, that by the oath of twelve, &c. they diligently inquire what damages the aforesaid Thomas hath sustained, as well by the occasion of the premises aforesaid as for his costs and charges by him about his suit in this behalf expended; and the inquisition which they shall thereupon take they send to the said lord the king from the day of St. Martin in fifteen days, wherefoever he shall then be in England, under the seal and the seals, &c. the same day is given to the said Thomas, before the said lord the king, wherefoever, &c. At which day, before our said lord the king at Westminster comes the said Thomas, by his said attorney; and the sheriffs of London, to wit, E. F. esquire and C. D. esquire, by virtue of the writ of the said lord the king to them thereupon directed, returned here a certain inquisition, indented and taken before them at Guildhall, in the city of L. in the parish of St. Mary Bassishaw, in the ward of Bassishaw, in the same city, on the 24th November in the twenty-first year of the reign of our lord the present king of Great Britain, &c. by virtue of that writ, by the oath of twelve, &c.; by which it is found, *that* the said Thomas sustained damages by reason of the premises aforesaid, besides his costs and charges about his suit in this behalf expended, to one thousand three hundred pounds, and for his costs and charges aforesaid, to twenty-seven shillings and fourpence: and thereupon, forasmuch as the court of our said lord the king now here is not as yet advised about giving judgment of

of and upon the premises, day is therefore given to the said Thomas to be before our lord the king in eight days of St. Hilary, wherefoever our lord the king shall then be in England, for hearing judgment of and upon the premises, because the said court here is not yet advised thereupon. At which day, before our said lord the king at Westminster comes the said Thomas, by his attorney aforesaid: whereupon, the premises being seen and fully understood by the court of our said lord the king here, and mature deliberation had thereon, it is considered that the said Thomas do *Final judgment* recover from the said H. his damages aforesaid by the said inquisition in form aforesaid found, and also ninety-six pounds twelve shillings and eightpence adjudged to the said Thomas by the court of our said lord the king now here at his request, for increase of his said costs and charges; which said damages in the whole amount to the sum of one thousand three hundred and ninety-eight pounds; and the said H. in mercy, &c.

In Michaelmas Term 1747, a writ of inquiry of damages was executed by rule of court before the lord chief justice Lee, when the inquest found damages generally for the plaintiff for one thousand three hundred pounds, the whole damages laid in plaintiff's declaration. Parliament, in that same Term, moved in arrest of the plaintiff's judgment, and made three objections.

First, that there was no such custom of merchants as was set out upon the plaintiff's declaration, and that the acceptor of the bill of exchange (afterwards protested for non-payment, and paid to the payee by the drawer, with the interest, exchange, re exchange, costs, and damages) was not by law liable to the drawer, without a previous assignment or indorsement of such bill to him by the payee.

That the demurrer to the plaintiff's replication after issue joined, was a discontinuance of the suit, but it was the defendant's own demurrer; for the defendant having pleaded that there was no such record of outlawry as the plaintiff had alleged, the plaintiff replied there was such a record, and thereupon issue was joined.

For that the declaration had not set forth the value of the four thousand dollars mentioned in the sixth Count, nor the value of the fifteen hundred dollars mentioned in the seventh Count.

But the court, after solemn argument and time taken to consider in Hilary Term following, was unanimously of opinion as to the first objection, that the plaintiff's action was well brought, and

that by the custom of merchants the defendants were bound by their acceptance, and that an indorsement by the payee was not necessary, and the rather for that in the present case the plaintiff had made title another way, viz. by payment of money, and therefore gave judgment for the plaintiff. As to the two other objections, they were of opinion that they were of no weight. The nineteenth of February following, plaintiff signed judgment; but not being able to get the costs taxed until the twenty-fifth of April, he was delayed from proceeding against the defendants bail so soon and so effectually as otherwise he would have done: And in order to prevent proceedings against the bail, a writ of error was brought and allowed the thirtieth of April last, and the transcript of the record was brought on the thirtieth of May following, the day parliament was prorogued; so that nothing could be done the last session of parliament. The plaintiff in error assigned several errors, namely general errors, and the three following.

Assignments in Error.—First, that there is no original writ between the said parties of the plea in the said declaration mentioned, filed upon record in the custody of the keeper of the writs in the said court of the said lord the king of Hilary Term, in the seventeenth year of his present majesty's reign. Secondly, that it doth not appear that the said Thomas Symmons hath found pledges to prosecute his suit. Thirdly, that there is not any writ of inquiry of damages between the said parties, in the said plea filed of record of Michaelmas Term.

Term of the twenty-first year of the reign of the said lord the king, remaining in the custody of the keeper of the writs of the said court of our said lord the king; and the plaintiff in error prayed a certiorari to be directed to the keeper of the writs, to certify the truth of the premises; which certiorari ought to have been awarded to the lord chief justice of B. R. in whose custody the writs are, and who is to certify them. The plaintiff in error has since procured a certiorari to be returned by the said lord chief justice; by which return it is certified, that there is no such original writ, or writ of inquiry of damages, as are mentioned in the assignment of errors. And the defendant in error has since come in voluntarily, and alleged that there is an original writ between the said Thomas S. and H. P. and L. B. of the plea in the declaration mentioned, filed of record in the said court of our said lord the king, before the king himself of the Term of the Holy Trinity, in the sixteenth and seventeenth years of his present majesty's reign; which said original warrants the declaration and judgment; and the defendant in error hath also prayed a writ of certiorari to the lord chief justice, who hath certified the said original writ, and the continuance thereof, and the defendant hath thereupon pleaded that there is no error.

The only considerable question in point of law (for with respect to the justice and equity of the case there can be none) therefore is, whether a *drawer* of a bill of exchange accepted generally by the *drawee* can in his own name, without a previous assignment or indorsement from the *payee*, maintain a special action on the case against the acceptor, and recover the money so paid: and the defendant in error humbly hopes, by the rules of law, and by the custom of merchants, he can maintain such action, and that such actions, and the proceedings therein, are right and agreeable to the rules and principles of law and justice; and therefore presume the judgment of the court of B. R. is right, and shall be affirmed with exemplary costs, (among many others,) for the following reasons: Because the plaintiff in error hath not controverted the fact of the custom, that there is such a custom of merchants, as is set forth in the declaration of the defendant in error, to make the *acceptor* of a bill of exchange liable to an action by the *drawer*, who, after the bill hath been accepted and protested for non-payment, had paid the contents thereof to him, to whom it

was made payable, and this is a good and reasonable custom. It is admitted by the plaintiff in error, that in case the defendant S. had taken an assignment or indorsement of the two bills of exchange from the two payees thereof, that he might have maintained this action in his own name; but such assignment or indorsement is not necessary, either by the custom of merchants, or required by law in the present case; and the defendant S. the drawer, has entitled himself by law to bring this action, by having paid these two bills to the payee, with interest, exchange and re-exchange, costs and damages; which bills the acceptor, by his acceptance, made himself liable to, and ought to have paid.

The acceptance of a bill of exchange amounts to a promise in law to pay; and this action of assumpsit against the acceptor is founded upon good consideration; upon the consideration of the acceptor having effects of the drawer in his hands at the time of his acceptance; and a general acceptance (as in the present case) is an admission by the acceptor, that he is debtor to the drawer for so much money, and that he hath effects or money in his hands of the drawer's to answer the payment of such bill. Every bill of exchange imports a command to the drawee to pay his acceptance, and is not only an admission of effects or money in his hands sufficient to pay, but it is an undertaking by the acceptor, as well with respect to the drawer as the payee, to pay the bill, and every undertaker is bound by law to perform his undertaking.

The plaintiff has among other errors assigned, that the defendant in error hath not found any pledges to prosecute his suit; but the defendant humbly insists, that the want of such pledges is no error; and if it was, that the plaintiff could not now take advantage of it. And the plaintiff hath also assigned for error, that there was not any writ of inquiry of damages assised of record by the defendant of Michaelmas Term, in the twenty-first year of his present majesty; but in case no such writ of inquiry had been filed, the defendant in error also insists, that the want thereof is aided by act of parliament, a writ of inquiry being a judicial writ. And as to the judgment given for the defendant in error on the two demurrers above mentioned, the defendant apprehends, that both these pleas are ill; and amongst other reasons, for that
they

they were not pleaded in bar, and that neither of them was pleadable in bar to the action. And it is humbly hoped, that the judgment given for the plaintiff in the action, and the now defendant in

error, shall be affirmed with exemplary costs. H. BANKS, R. DRAPER.

7. Will. 185. An action on a bill of exchange lies for the drawer against the drawee, after he has accepted it.

BY PAYEE AGAINST DRAWER, &c.

FOR that whereas the said (defendant) heretofore, to wit, on, &c. at, &c. according to the custom of merchants in that respect used and approved of, made and drew his certain bill of exchange in writing, bearing date the day and year aforesaid, upon one J. S. by the name and description of, &c. and by the said bill required the said J. S. to pay to the said (plaintiffs), by the name of, &c. or to their joint order or demand, fifteen hundred pounds for value received, and then and there delivered the said bill to the said (plaintiffs), which said bill the said (plaintiffs) afterwards, to wit, on, &c. at, &c. shewed and presented to the said J. S. for his acceptance thereof, and then and there required him to accept the same; but the said J. S. did not then and there, or at any other time whatsoever, accept the said bill, and then and there wholly refused ever to accept or pay the same; whereof the said (defendant) afterwards, to wit, on, &c. at, &c. had notice; by reason of which premises, and according to the custom and by the law of merchants, the said (defendant) became liable to pay to the said (plaintiffs) the said sum of, &c. in the said bill specified, when he the said (defendant) should be thereto afterwards requested; and being so liable, he the said (defendant), in consideration thereof, afterwards, to wit, on, &c. at, &c. undertook, &c. when he the said (defendant) should be thereto afterwards requested. And whereas the said defendant on, &c. at, &c. according to the custom of, &c. in that respect used and approved, made and drew his certain other bill of, &c. in writing, bearing date, &c. upon one J. S. by the names of, &c. and by the said last mentioned bill required the said J. S. to pay to the said (plaintiffs), by the name of &c. fifteen hundred pounds sterling on demand to their joint order for value received, and then and there delivered the said last-mentioned bill to the said (plaintiffs), which said last mentioned bill the said (plaintiffs) afterwards, to wit, on, &c. at, &c. shewed and presented to the said J. S. for his acceptance thereof, and then and there required him to accept the same; but the said J. S. did not then, or at any other time whatsoever, accept the said last-mentioned bill, but then and there wholly refused ever to accept or pay the same; whereof the said (defendant) afterwards, to wit, on, &c. at, &c. had notice; by reason of which premises, and according to the custom and the law of merchants, he the said (defendant) became liable to pay to the said (plaintiffs) the said sum of, &c. in the said last-mentioned bill specified, when he the said (defendant) should be thereto afterwards requested; and being so liable, he the said (defendant), in consideration thereof, afterwards,

Payee v. Drawer, 1st Count for non acceptance by drawee, with averment that plaintiffs have not indorsed the bill payable to their joint order.

ASSUMPSIT GENERAL.—ON BILLS OF EXCHANGE,

to wit, on, &c. at, &c. undertook, &c. when he should be thereto afterwards required: and the said plaintiffs aver, that they have not yet indorsed over or negotiated the said last-mentioned bill of exchange, or ordered or appointed the money therein specified to be paid to any person or persons whatsoever, but the said last-mentioned bill is still in their hands and possession, as legal holders thereof, not indorsed over or negotiated, to wit, at, &c.

Pays v. Acceptor (a), with the cases on acceptance.

(a) 2 Bl. Comm.

270. Burr 1674.

Bull. Nl. Pri.

Ed. 1790.

12. Mod. 410,

411.

Ld. Raym. 575

Com. 76.

Burr. 1672.

1674.

2. Str. 955.

Burr. 1663.

Doug. 284.

7. Atk. 611.

Str. 1000.

Bavenstock v.

Titter, B. R. M.

24. G. III.

Str. 817.

2. Will. 9.

Str. 1195.

p. 418. f. 40.

42. 1. Ed. 419.

Beawes, f. 223.

1. Ed. p. 444.

Marius, 2. Ed. 16.

Molloy,

b. 1. c. 10. f. 18.

2. Str. 2.

Ld. Raym. 364.

12. Mod. 211.

Salk. 127.

Ld. Raym. 574.

12. Mod. 410.

Salk. 129.

Doug. 284.

1. Atk. 611.

Comb. 401.

Cowp. 573.

574. Doug.

286.

Burr. 1666.

Molloy, b. 2. c. 10. f. 20.

Marius, 2. Ed. 17.

Ann. 75.

1. T. Rep.

286 182.

Str. 1217.

648.

Doug. 286.

Cowp. 572.

1. T. R. 369.

Str. 214.

11. Mod. 199.

Str. 221.

1195.

Sinith v. De la Fontaine, B. R. T. 25. G. 3.

Comb. 452.

Mar. 2. Ed. 22.

Str. 817.

Molloy, b. 2. c. 10. f. 18, 19, 20, 21.

28. Mar. 2. Ed. 16, 17.

Beawes, f. 218.

1. Ed. p. 443, 444, 453.

and f. 222.

1. Ed. p. 444.

12. Mod. 410.

Doug. 235, 236, 237, 238.

284.

FOR that whereas one W. S. heretofore, to wit, on, &c. at, &c. according to the custom of merchants, made and drew his certain bill of exchange in writing, bearing date the day &c. aforesaid, upon the said (defendant), by the name of T. T. No. 13, Smithfield, London, and thereby required the said (defendant) to pay to the said (plaintiff), by the name of Mr. T. C. or order, two months after date of the said bill, one hundred pounds for value received, and then and there delivered the said bill of exchange to the said (plaintiff), which said bill he the said (defendant) afterwards, to wit, on, &c. at, &c. aforesaid, according to the custom of merchants in that particular, accepted; by reason whereof, and by force of the custom and the law of merchants, the said defendant became liable to pay to the said plaintiff the said sum of money in the said bill of exchange specified, according to the tenor and effect of the said bill, and of the aforesaid acceptance thereof; and being so liable, &c. (Promise to pay, &c. according to the tenor and effect of the said bill and his aforesaid acceptance thereof. Common conclusion.)

Pays v. Drawer upon the acceptor's refusing payment.

WHEREAS the said defendant heretofore, to wit, on the twenty-seventh day of January, A. D. 1787, at, &c. according to the custom of merchants, made and drew his certain bill of exchange in writing, bearing date, &c. upon one T. T. No. 13, Smithfield, London, and thereby required him the said T. T. to pay to the said plaintiff, by the name of Mr. H. or order, two months after the date of the said bill, one hundred pounds for value received, and then and there delivered the said bill to the said plaintiff, which said bill of exchange he the said T. T. afterwards, to wit, on, &c. at, &c. aforesaid, according to the custom of merchants in that particular, accepted: and the said plaintiff avers, that he the said plaintiff afterwards, at the end and expiration of

the

the time appointed for the payment of the said sum of money in the said bill mentioned, to wit, on the thirtieth day of March, A. D. aforesaid, at, &c. aforesaid, shewed and presented the said bill to the said T. T. and then and there required him the said T. T. to pay to him the said plaintiff the said sum of money in the said bill mentioned, according to the tenor and effect of the said bill and his aforesaid acceptance thereof; but the said T. T. did not, when the said bill was so shewn and presented as aforesaid, or at any other time whatsoever, pay to the said plaintiff the said sum of money in the said bill mentioned, or any part thereof, but then and there wholly refused so to do; of which said several premises be the said defendant afterwards, to wit, &c. had notice; by reason of which several promises, and by force of the custom and the law of merchants, he the said defendant became liable to pay to the said plaintiff the said sum of money in the said bill mentioned, when he the said defendant should be thereto afterwards requested; and being so liable, &c. (Promise to pay on request accordingly. Common conclusion.)

AS in the last precedent to this X mark (i. e. state the delivery). And the said plaintiff avers, that he the said plaintiff afterwards, to wit, on, &c. at, &c. aforesaid, according to the custom of merchants, shewed and presented, and caused, &c. the said bill to the said T. T. for his acceptance thereof, and then and there required him the said T. T. to accept the same; but the said T. T. did not nor would then and there accept the said bill, but then and there wholly and absolutely refused so to do; whereof the said defendant afterwards, to wit, on, &c. at, &c. had notice: by reason of which several promises, and by force of the custom and law of merchants, he the said defendant became liable to pay to the said plaintiff the said sum of money in the said bill specified (a), *when he the said defendant should be thereto afterwards requested*; and being so liable, &c. promise accordingly.

Payee v. Drawee,
upon the drawee's refusal to accept.

(a) If the drawee refuses to accept the bill, the payee (b) can immediately upon refusal oblige the drawer to pay the contents of the bill, although, according to the tenor of the bill, the payment is to be at some

future time. *Milford v. Mayor, Douglas*, 55. 3. Burr. 1687. V. LAWES.

(b) *Bright v. Purrier, Bull. Ni. Pri.* Ed. 1799. p. 269.

On the acceptance say,

AT London, &c. upon sight thereof, accepted at two months after the date of the said bill, according to the said custom, &c. became liable to pay, &c. according to the tenor of his acceptance, &c. promised, &c. according to the tenor and effect of his said acceptance of the said bill. (A 2d Count, that the defendant accepted generally, &c.)

On a bill of exchange, *Payee v. Acceptor*, on a bill drawn payable at one month, and by defendant accepted at two months.

Declaration in
exchequer of
pleas of an
inland bill of ex-
change, *Payee*
v. *Acceptor*, the
bilkated twelfth
day of the twelfth
month, with an
averment, that
twelfth month is
December.

LANCASHIRE, to wit. John Tunstall, a debtor of our so-
vereign lord the king, comes before the barons of his exchequer
on the day of and complains by bill against John
Jackson, present here in court the same day, of a plea of trespass on
the case, &c. for that whereas, at the several times hereafter men-
tioned, he the said J. T. the said J. F. and Joseph Tilley, were
persons residing, trading, and using commerce within this king-
dom, to wit, at Liverpool, in the county aforesaid, and being so
resident and trading, the said J. T. on the twelfth day of De-
cember, A. D. 1723, at L. aforesaid, made his certain bill of ex-
change in writing, subscribed with his own proper hand, accord-
ing to the custom of merchants, from time immemorial used and
approved of within this kingdom, and the said bill, bearing date
the day and year aforesaid, directed to the said John by the name
of, &c. and thereby required him, twenty days after date of the
said bill, to pay to the said J. F. by the name of, &c. or order,
the sum of twenty pounds, and his acquittance should be the said
J. T.'s discharge for so much from the said J. T. and then and
there delivered the said bill to the said J. F. (payee and defend-
ant); which said bill of exchange the said J. S. afterwards, and be-
fore the payment of the money therein specified, and also before
the time appointed by the said bill for the payment thereof, to wit,
on the twentieth day of December in the year aforesaid, at L.
aforesaid, upon sight thereof accepted, according to the said custom;
and by reason thereof, and according to the said custom, the said
J. S. became liable to pay to the said J. F. the said twenty
pounds, specified in the said bill, according to the tenor and ef-
fect of the said bill, and his said acceptance thereof; and being so
liable, he the said J. S. in consideration, &c. afterwards, &c. at,
&c. undertook, &c. and promised the said J. F. to pay him the
said sum of money contained in the said bill (b) according to the
tenor and effect of the said bill, and of his said acceptance thereof:
and the said J. F. avers, that the twelfth month mentioned in the
said bill was and is understood and known to be the month of De-
cember, and no other month. (Another Count on the same bill,
laying it on the same date, and payable on the same day, but omit
the averment; money had, &c.; and common conclusion.)

(b) Acceptance to pay a bill of ex-
change after the day of payment past,
secundum tenorem billæ, good, Lord Ray.
574; though the better way is to de-

clare on a general promise, without re-
straining it by the *tenorem*, &c. Lord
Raym. 365. 12. Mod. 221. 410. Salt.
327, 329.

Payee, Drawer.
One Count, that
the person on
whom drawn
accepted, but
did not pay;
and a other, that
he refused to ac-
cept.

YORKSHIRE, to wit. That whereas, at the several times
hereafter mentioned, the said A. and J. and one Edward Press,
were persons residing, &c. to wit, at the Castle of York, and
being so resident and trading, he the said J. on the fifteenth day of
September, A. D. 1749, at, &c. aforesaid, made his certain bill of
exchange in writing, subscribed with his own proper hand, ac-
cording

According to the custom of merchants from time immemorial used and approved of within this kingdom, and the said bill bearing date the day and year aforesaid, then and there directed to the said Edward by the name and description of Mr. Edward Prefs, of Doncaster, shopkeeper, and by the said bill required the said Edward, *at sight thereof*, to pay to the said A. or order, the sum of eight pounds, and to place the same to account as by advice from the said J. and then and there delivered the said bill to the said A. which said bill the said E. afterwards, and before the payment of the said sum of money contained in the said bill, or of any part thereof, and also before the time appointed by the said bill for the payment of the money therein specified, to wit, on the said fifteenth day of September in the year aforesaid, at the Castle of York aforesaid, in the county aforesaid, upon sight thereof accepted, according to the said custom: and the said A. avers, that he the said A. afterwards, at the expiration of the time appointed by said bill for the payment of the money therein mentioned, to wit, on the eighteenth day of September in the year aforesaid, at, &c. aforesaid, *(a)* *showed and presented* said bill to the said Edward, and then and there required the said E. to pay to the said A. the said sum of money mentioned in the said bill, according to the tenor and effect of the said bill, and of his said acceptance thereof; but the said E. at the time when the said bill was so shown and presented to him as aforesaid, or at any other time whatsoever, did not pay to the said A. the said sum of money contained in the said bill, or any part thereof, but then and there wholly refused so to do; of all which said premises the said J. afterwards, to wit, on the nineteenth day of September in the year aforesaid, at, &c. aforesaid, had notice; by reason of which said several premises, and according to the said custom and law of merchants, the said J. became liable to pay to the said A. the said sum of eight pounds specified in the said bill; and being so liable, &c. (Assumpsit to pay on request.)

And whereas the said A. J. and E. being so resident and trading as aforesaid, the said J. on the fifteenth day of September in the year aforesaid, at, &c. aforesaid, made his certain other bill of exchange in writing, subscribed with his own proper hand, according to the custom, &c. and the said last-mentioned bill, bearing date the day and year last aforesaid, then and there directed to, &c. and by the said bill required, &c. (as in the other Count), and then and there delivered the said bill to the said A. which said last bill the said A. afterwards, to wit, on the day and year last aforesaid, at, &c. aforesaid, in the county aforesaid, showed and presented to the said E. for his acceptance thereof, and then and there required him to accept the same; but the said E. *did not then, or at any other time whatsoever, accept the said bill, but then and there wholly refused to accept the same, or ever to pay to the said A. the said sum of mo-*

2d Count on drawee's (1) refusal to accept. (1) Bull. Nl. Pri. 1793. p. 269. Doug. 55. Mar. 2. Ed. 13. Bumb. 119. Bl. 763. 761. 6. Mod. 138. Pl. Aff. 28. 1. Will. 185. 4. Bro. Parl. Ca. 607. 2. T. R. 32.

(a) It should be averred in the declaration, that the bill was shown or presented to the drawee, so ruled on demur-

ner for that omission. Vin. Abr. tit. Bills of Exchange, O. 5. and 2. Show. 180. Doug. 654.

ney therein mentioned, or any part thereof; of all which said promises the said J. afterwards, to wit, on the day and year aforesaid, at, &c. had notice; by reason of which said premises last-mentioned, and according to the said custom, and by the law of merchants, the said J. became liable, &c.; and being so liable, &c. (Assumpsit to pay on request; money had and received; and common conclusion.)

LONDON, to wit. For that whereas the said defendant in the lifetime of the said William, and before the making of the promise and undertaking hereafter next mentioned, to wit, on, &c. at, &c. according to the usage and custom of merchants, made his certain bill of exchange in writing, his own proper hand-writing being thereunto subscribed, bearing date the same day and year aforesaid, and then and there directed the said bill to one Sir William Lewis, and thereby required the said Sir William Lewis, at a certain time in the bill mentioned, to pay to the said William, or his order, one hundred pounds, which said bill of exchange the said Sir William afterwards, to wit, on, &c. upon sight thereof, accepted, according to the said custom: and the said plaintiff's aver, that afterwards, and when the said bill became due and payable, according to the tenor and effect thereof, to wit, on, &c. the said William shewed and presented, and caused and procured the said bill to be shewn and presented to the said Sir William for his payment thereof, and then and there requested him to pay the same; but that the said Sir William did not then and there, or at any other time whatsoever, pay the said sum of money, or any part thereof, to the said William, but therein wholly failed and made default; whereof the said John afterwards, and in the lifetime of the said William, and before the making of the said promise and undertaking of him the said defendant hereinafter mentioned, to wit, on, &c. had notice; and by reason thereof, and according to the law and custom of merchants, the said John became liable to pay to the said William the said sum of one hundred pounds, when he should be thereto afterwards requested. And being so liable, afterwards, to wit, on, &c. in consideration of the said premises, and also in consideration that the said William had, at the like special instance and request of the said defendant, forbore to call on said defendant for the immediate payment of the said sum of money, in the said bill of exchange mentioned, and had then and there, at the like special instance and request of said defendant, accepted a bond from the said Sir William Lewis, bearing date, &c. conditioned for the payment of the said sum of one hundred pounds by the said Sir William, with interest at five per cent, on, &c. then next, he the said John undertook, &c. the said William, that if any default should happen in the said payment of the said sum of money, according to the condition of the said bond, he the said John would be responsible to the said William for the same; and the said plaintiff avers, that the said Sir William Lewis did not pay

Declaration by
Executrix on a
bill of exchange
and a bond:
the bill of ex-
change was not
paid when due;
whereupon the
testator accept-
ed a bond from
the acceptor of
the bill, which
was also not
paid.

In consideration
that testator
would forbear
and accept a
bond.

If default should
be made in pay-
ment of the
bond, would be
responsible.

To the said William the sum of one hundred pounds and interest, or any part thereof, on, &c. then next, according to the condition of the said bond, or at any other time whatsoever, but therein wholly failed and made default; of all which said premises the said John afterwards, and in the lifetime of the said William, to wit, on, &c. had notice; and by reason thereof, and according to the said promise and undertaking of the said John, in form aforesaid made, the said John became liable to pay to the said William the said sum of money and interest when he should be there- to afterwards requested. And whereas also the said John afterwards, and in the lifetime of the said William, and before the making of the promise and undertaking of the said John herein- after mentioned, to wit, on, &c. was indebted to the said William in another large sum of money, to wit, in the sum of one hundred pounds, for so much money before that time lent, and by the said William to the said John at his like special instance and request, upon the security of a certain note or bill of exchange, before that time drawn by the said John on the said Sir W. L. payable to the said William, which had been duly accepted by the said Sir W. L. but had not been paid by him: and whereupon afterwards, to wit, on, &c. in consideration of the premises, and also in consideration that the said William had then and there, at the like instance and request of the said John, forbore to call on the said John for the immediate payment of the said last-mentioned sum of money, and had accepted a bond from the said Sir W. L. bearing date, &c. conditioned for the payment of the said last-mentioned sum of one hundred pounds, by the said Sir W. L. to the said William, with interest at five pounds per cent, on, &c. he the said John undertook, &c. that if any default should happen in the payment of the said last-mentioned sum of money, according to the consideration of the said last-mentioned bond, he the said John would be responsible to the said William for the same: and the said plaintiffs aver; that the said Sir W. L. did not pay the said last-mentioned sum of money, with interest, or any part thereof, to the said William, on, &c. then next, according to the consideration of the said last-mentioned bond, or at any other time whatsoever, &c. &c. (Conclude as in first Count.) And whereas also the said John heretofore, and in the lifetime of the said William, to wit, on, &c. at, &c. made his certain note in writing, commonly called a promissory note, bearing date, &c. and then and there delivered the said note to the said William, by which said note the said John on demand promised to pay to the said William ten pounds; by reason whereof, and by force of the statute in such case made and provided, the said John became liable to pay to the said William the said sum of money, &c.; and being so liable, he the said John undertook, &c. And whereas, &c. (Money had
&c.; and received; 5th, money lent, &c.; 6th Count, money laid out, &c.; account stated.) Yet the said John not regarding, &c. but Conclusion.

2d Count for money lent upon the security of another bill of exchange.

In consideration of forbearance and accepting a bond.

If default of payment, would be responsible.

3d Count as on a promissory note.

4th Count.

con-

contriving, &c. to deceive, &c. the said John in his life-time, and the said plaintiffs as aforesaid, since his death, in this behalf hath not, although often requested, been responsible to the said William in his life-time, or to the said plaintiff, executrix as aforesaid, since the death of the said William, for the said several sums in the first and second counts of this declaration mentioned, or either of them, or paid the same, or the said several other sums of money hereinbefore mentioned, or any of them, or any part thereof, to the said William in his life-time, or to the said plaintiff, executrix as aforesaid, since the death of the said William, or to either of them, or in anywise satisfied any or either of them for the same, but hath hitherto wholly refused so to do, and still doth refuse to pay the same to the said plaintiff, executrix as aforesaid, to the damage of the said plaintiff, executrix as aforesaid, of one hundred pounds; and therefore she brings her suit. And she brings into court here the letters testamentary of the said William deceased, which testify to the court here, that the said plaintiff is executrix of the last will and testament of the said William deceased, and has the execution thereof, &c.

Protest.

Plea to the above, General issue 2d, *Alitio non accrevit infra sex annos* (a). 3d, That testator was indebted to defendant in a larger sum of money than he owed to plaintiff. 4th plea, That the promise, bills of exchange, and bonds, in the first and second counts, are the same; that Sir W. L. in life-time of testator, paid part of principal and interest then remaining due; and that the bond last made was delivered by the said Sir W. L. and accepted by the said testator, in satisfaction of the former bond of defendant. 5th plea, The like plea, only stating, that the bond last made was delivered by the said Sir W. L. and accepted by the testator, as and by way of satisfaction of the former promise and undertaking of said defendant. 7th plea, Same, only stating, that the bond last made was delivered by Sir W. L. and accepted by testator, as and by way of a new security for the principal and interest remaining due on the first bond.

And the said John, by A. B. his attorney, comes and defends the wrong and injury when, &c. (*non assumpsit*) And for further plea in this behalf, he the said John, by leave of the court here for this purpose first had and obtained, according to the form of the statute in such case made and provided, says, that the said plaintiffs (*alio non*): because he says, that the said several causes of action in the said declaration mentioned *did not accrue*, nor did any or either of them accrue, to the said plaintiffs, within six years next before the suing forth the original writ of the said plaintiffs, in manner and form as the said plaintiffs have above complained against him; and this, &c.: wherefore, &c. if, &c. (a). And for further plea in this behalf, the said John, by like leave of, &c. according, &c. says, that the said plaintiffs (*alio non*): because he says, that the said W. E. deceased, in his life-time, and at the time of his death, was indebted in, and that there is still due and owing from the said plaintiffs, executrix and executor as aforesaid, unto him the said John, to wit, at, &c. a much larger sum of money than the sum of money due and owing from the said John to the said plaintiffs as such executrix and executor as aforesaid, and whereof they have above complained against him, to wit, the sum of one thousand pounds, of lawful, &c. for divers goods, &c. sold and delivered to the said W. E. and at his special instance and request, and for money by the said John lent, &c. and for other money laid out, &c. and for other money had and received, &c. and for other money due and owing upon an account stated between the said W. E. and the said John; which said sum of money so due and owing to the said John exceeds the damages sustained by the said plaintiffs. 6th plea, Same, only stating, that the bond last made was delivered by the said Sir W. L. and accepted by the testator, as and by way of satisfaction of the former promise and undertaking of said defendant. 7th plea, Same, only stating, that the bond last made was delivered by Sir W. L. and accepted by testator, as and by way of a new security for the principal and interest remaining due on the first bond.

plaintiffs

plaintiffs as such executor and executrix as aforesaid, by reason of the non-performance of the several promises and undertakings in the said declaration mentioned; and out of which said sum of money the said John is ready and willing, and hereby offers, to *set off* and allow to the said plaintiffs, as such executor and executrix as aforesaid, so much money as the damage sustained by them by reason of the non-performing the several promises and undertakings of the said John in the said declaration mentioned amount to; and this, &c. : wherefore, &c. if, &c. And for further plea in this behalf as to the first and second counts of the said declaration, he the said John, by like leave, &c. says (*ad id non*) ; because he says, that the said promises and undertakings in the said first count of the said declaration mentioned, and the said promises and undertakings in the said second count of the said declaration mentioned, are one and the same promise and undertaking, and not divers or different promises and undertakings ; and that the said bill of exchange and bond in the said first count of the said declaration mentioned, and the said bill of, &c. in the said second count of, &c. were and are one and the same bill of exchange and bond, and not other, &c. ; and that after the making of the said promise and undertaking in the said first and second counts in the said declaration mentioned, and in the life-time of the said W. E. and before the suing forth the original writ of the said plaintiffs, to wit, on, &c. the said Sir W. L. paid and satisfied to the said W. E. a certain other large sum of money, parcel of, &c. and interest, for which the said bond in the said first and second counts of the said declaration mentioned was so given as aforesaid ; and that the said Sir W. L. on, &c. at, &c. made, sealed, and as his act delivered unto him the said W. E. a certain other bond or writing obligatory, as therein is mentioned, in a certain penal sum of money therein also mentioned, conditioned for the payment to him the said W. E. at a certain day then to come, of a certain large sum of money therein also mentioned, to wit, a sum of money amounting to the principal and interest then remaining due and owing to him the said W. E. on the said bond in the said first and second counts of the said declaration mentioned, with interest ; which said bond or writing obligatory lastly made by the said Sir W. L. as aforesaid, he the said Sir W. L. then and there made and delivered to the said W. E. in lieu, satisfaction, and discharge of the said former bond of him the said Sir W. L. in the said first and second counts of, &c. and of all principal and interest then remaining due and owing thereupon, and also in full satisfaction and discharge of the said promise and undertaking of the said John in the said first and second counts of, &c. ; and which said bond or writing obligatory so lastly made by the said Sir W. L. as aforesaid, the said W. E. then and there took, accepted, and received of and from the said Sir W. L. in lieu, satisfaction, and discharge of the said former bond of the said Sir W. L. in the said first and second counts of, &c. and of all such principal and interest then due and owing thereon as aforesaid, and also in full, &c. of the said promise and undertaking of the said John in the said first and second counts of,

5th Plea.

of, &c. ; and this, &c. : wherefore, &c. And for further plea in this behalf, &c. (*actio non*) ; because he says, that the said promise and undertaking in the said first count, &c. and the said promise and undertaking in the said second count, &c. are one and the same promise and undertaking, and not divers, &c. and that the said bill of exchange and bond in the said second count of, &c. are one, &c. &c. ; and that after the making of the said promise and undertaking in the said first and second counts mentioned, and in the life-time of the said W. E. to wit, on, &c. at, &c. the said sir W. L. paid and satisfied to the said W. E. a certain large sum of money ; to wit, &c. *parcel*, &c. and interest, for which the said bond in the said first and second counts, &c. was so given as aforesaid ; and that the said sir W. L. afterwards, to wit, on, &c. made, sealed, and as his act delivered unto the said W. E. a certain other bond, &c. dated as therein is mentioned, in a certain penal sum of money therein also mentioned, conditioned for the payment to him the said W. E. at a certain day then to come, of a certain large sum of money therein also mentioned, to wit, a sum of money amounting to the principal and interest *then remaining due and owing* to him the said W. E. on the said bond in the said first and second counts of the said declaration mentioned, with interest ; and which said bond or writing obligatory so lastly made by the said sir W. L. he the said sir W. L. then and there made and delivered to the said W. E. in lieu, &c. of the said former bond of the said sir W. L. in the said first and second counts, &c. and of principal and interest then remaining due and owing thereon ; and which said bond, or, &c. so lastly made as aforesaid by the said sir W. L. the said W. E. then and there took, accepted, and received of and from the said sir W. L. in lieu, &c. of the said former bond of the said sir W. L. in the said first and second counts, &c. and of all such remaining principal and interest then remaining due and owing thereon as aforesaid ; and this, &c. wherefore, &c. if, &c. And for further plea, &c. (*actio non*) ; because he says, that the said promise and undertaking in the said first count, &c. and the said promise and undertaking in the said second count, &c. are one, &c. and that the said bill, &c. &c. (as before) ; and that after the making of the said promise and undertaking in the said first and second counts, &c. and in the lifetime of the said W. E. and before the suing, &c. of the said plaintiffs, to wit, on, &c. the said sir W. L. paid and satisfied to the said W. E. a certain, &c. *part and parcel*, &c. for which said bond in the said first and second, &c. was so given as aforesaid ; and that the said sir W. L. afterwards, to wit, on, &c. made and sealed, and as his act delivered to the said W. E. &c. (as before), in full satisfaction and discharge of the said *promise and undertaking* of the said John in the said first and second, &c. as to the residue of the said principal and interest *then remaining due*, &c. to the said W. E. on the said bond in these counts mentioned ; and which said bond, or, &c. so lastly made by the said sir W. L. as aforesaid, the said W. E. then and there took, &c. in full, &c. of the said

6th Plea.

Said promise and undertaking of the said John in the said first and second counts, &c. as to the residue of the said principal and interest then remaining due and owing on the said bond in those counts mentioned as aforesaid; and this, &c. wherefore, &c. And for further plea, &c. as to the first and second counts, &c. ^{7th plea} (*actio non*); because he says, that the said promise and undertaking in the said count, &c. (as before, till you come to "not other and different"); and that after the making of the said promise and undertaking in the first and second counts, &c. and in the lifetime of, &c. and before the suing, &c. to wit, on, &c. the said sir W. L. paid, &c. a certain, &c. part, &c. for which the said bond in the said first and second &c. was so given as aforesaid, and that the said sir W. L. afterwards, &c. made, &c. &c.; which said bond, or, &c. so lastly made by the said sir W. L. he the said sir W. L. then and there made and delivered to the said W. E. as and by way of a new security for the residue of the said principal and interest then remaining due and owing to the said W. E. on the said bond in the said first and second, &c.; and which said bond so lastly made by the said sir W. L. as aforesaid, the said W. E. then and there took, accepted, and received of and from the said sir W. L. by way of a new security for the said residue of the said principal and interest then remaining due and owing on the said bond of the said sir W. L. in the said first and second counts, &c.; and this, &c. wherefore, &c. if, &c.

S. MARSHALL.

I have taken a similar liberty to abridge this Plea, and the Replication, as I have done some of the Declarations preceding, but preserved the substance.

And as to the said plea of the said John by him above pleaded in bar, and whereof he hath put himself upon the country, the said plaintiffs do the like. And as to the said plea of the said John by him secondly above pleaded in bar, they the said plaintiffs say, *præcludi non*; because they say, that the aforesaid William in his lifetime, after the making of the said several promises and undertakings of the said John in the said declaration mentioned, to wit, on, &c. for the recovery of his damages by him sustained by reason of the non-performance of the said several promises and undertakings sued and prosecuted out of the court of chancery of our said lord the now king, and the said court then being at Westminster in the said county of Middlesex, a certain original writ of our said lord the now king, against the said John, by the name of J. P. late of, &c. directed to the then sheriffs of the city of London; by which said writ the king commanded the said then sheriffs of London aforesaid, that if the said William should make them secure of prosecuting his claim, then they should put by gages and safe pledges the aforesaid John, that he should be before the justices of our said lord the now king at Westminster, on the morrow of All Souls then next following, to shew wherefore, with force and arms, the close of him the said William, at, &c. he broke, and other wrongs to him did, to the great damage of not accept the last bond in discharge of the first. 5th and 6th nearly the same as 4th and 7th, that the testator did not accept the last bond by way of new security.

Replication to the above plea, that the testator sued out of the court of chancery a writ; but before the return he died, and that plaintiffs, as executors, some time afterwards sued out another writ, and that the cause of action did accrue within six years. 3d Replication, that neither the testator nor the plaintiffs are indebted to the plaintiff. 4th, admitting that A. B. did pay part, but that the testator did

him the said William and against the peace of our lord the now king, and that they should have then the names of those pledges, and that writ; which said writ the said William sued out against the said John, with an intention, that upon an appearance of the said John to the said writ of the said William, he the said William, according to the custom of the said court of the bench here, would thereupon declare against the said John for the cause aforesaid in the declaration of them the said plaintiffs above mentioned; but that he the said William afterwards, and before the return of the said original writ, to wit, on, &c. died, whereby the said original writ then and there became, and was wholly abated and discontinued; and the said plaintiffs, executor and executrix as aforesaid, in a much shorter time than the space of one year after the death of the said William, and as soon as they conveniently could, to wit, on, &c. sued out of the court of chancery of our lord the now king, the same then being at Westminster aforesaid, in the said county of Middlesex, the said original writ whereon the said plaintiffs have above declared, returnable to the said court of the lord the king of the bench, on, &c. in the twenty-ninth year of, &c.; to which said original writ of them the said plaintiffs, the aforesaid John, in Michaelmas Term last past, appeared, by J. N. his attorney, in the said court of the lord the king of the bench here; whereupon they the said plaintiffs, in the said Michaelmas Term last past, declared thereupon against the said John in manner and form aforesaid. And the aforesaid plaintiffs in fact say, that the said several causes of action, and each of them, have accrued within six years next before the issuing the said original writ so by the said William in his lifetime sued out and prosecuted as aforesaid, and that the aforesaid William, in the writ and declaration of them the said plaintiffs above named, are one and the same person, and not other or different; and that the aforesaid John, in the aforesaid original writ by the said William sued and prosecuted as aforesaid named, and the said John in the writ and declaration of them the said plaintiffs above named, are one and the same person, and not other or different; and this, &c. wherefore they pray judgment, and their damages, by occasion of the premises, to be adjudged to them, &c. And as to the said plea of the said John by him thirdly above pleaded in bar, the said plaintiffs say, that they *præcludi non*; because they say, that the said William in his lifetime, and at the time of his death, was not, nor were, nor are they the said plaintiffs, as executor and executrix as aforesaid, or either of them, indebted to the said John in manner and form as the said John hath in his said third plea above pleaded; and this the said plaintiffs pray may be inquired of by the country, &c. And as to the said plea of the said John by him fourthly above pleaded in bar as to the first and second counts of the said declaration, the said plaintiffs say, *præcludi non*; because protesting, that the said fourth plea, and the matters therein contained, are not sufficient in law to bar them from having their aforesaid action thereof maintained against him the said John for

replication;

Averment that plaintiffs named in writ and declaration are the same, &c.;

and that defendant named, &c. the same, &c.

Replication to 3d plea, issue tendered on the 1st off.

Replication to 4th plea.

replication: nevertheless, in this behalf the said plaintiffs say, that true it is that the said sir W. L. did pay and satisfy to the said William in his lifetime such sums of money as the said John hath in his fourth plea above alledged, part and parcel of the said 100*l*. and interest, for which the said bond in the first and second counts was given, as the said John hath in his said fourth plea above alledged; but protesting, that the said sir W. did not make, seal, and as his act and deed deliver unto the said William such other bond or writing obligatory as the said John hath in his said plea also alledged: and the said plaintiffs further say, that the said William in his lifetime did not take, accept, or receive the said last mentioned bond or writing obligatory from and of the said sir W. L. in lieu, satisfaction, and discharge of the former bond of him the said sir W. L. in the said first and second counts of the said declaration mentioned, and of all principal and interest then due and owing thereon, and also in full satisfaction and discharge of the said promises and undertakings of the said John in the said first or second counts of the said declaration mentioned, or either of them, in manner and form as the said John hath in his said fourth plea above alledged; and this the said plaintiffs pray, &c. *And* Replication 5th plea. as to the said plea of the said John by him fifthly above pleaded in bar as to the first and second counts, &c. the said plaintiffs say, *precludi non*; because protesting, that the said fifth plea, and the matters therein contained, are not sufficient in law to bar them the said plaintiffs from having and maintaining their aforesaid action thereof against the said John for replication: nevertheless, in this behalf the said plaintiffs say, that true it is that the said sir W. L. did pay and satisfy to the said William in his lifetime such sum of money as the said John hath in his said fifth plea above alledged, part, &c. and interest, for which the said bond in the said first and second counts of the said declaration mentioned was given, as the said John hath in his said fifth plea above alledged; but protesting, that the said sir W. L. did not make, seal, and as his act and deed deliver unto the said W. E. such other bond or writing obligatory as the said John hath in his said fifth plea above alledged; and the said plaintiffs further say, that the said W. E. in his lifetime did not take, accept, and receive the said last mentioned bond or writing obligatory of and from the said sir W. L. in lieu, satisfaction, &c. of the said former bond of him the said sir W. L. in the said first and second counts of the said declaration mentioned, and of all remaining principal and interest then due and owing thereon, in manner and form as the said John hath in his said fifth plea above alledged; and this the said plaintiffs also pray, &c. *And* as to the said plea of the said John by him sixthly above pleaded in bar as to the first and second counts of &c. say, &c. *precludi non*; because protesting, that the said sixth plea, &c. (as before); nevertheless, for replication, &c. they say, that true it is that the said sir W. L. did pay and satisfy to the said W. E. in his lifetime such sum of money as the said John hath in his said sixth plea above alledged, part and parcel, &c. for which the said bond in the said first and second counts, &c. was given, as the

Replication to
7th plea.

said John hath in his said sixth plea above alledged; but protesting, that the said sir W. L. did not make, &c. (as before), in full satisfaction and discharge of the said promise and undertaking of the said John in the said first and second counts, &c. as to the said residue of the said principal and interest then remaining due and owing on the said bond in these counts mentioned, in manner and form as the said John hath, &c. alledged; and this they pray, &c. And also as to the said plea of the said John by him lastly above pleaded in bar as to the said first and second counts, &c. the said plaintiffs say, *præcludi non*; because protesting, that the said last plea and the matters therein contained, &c. (as before) for replication, &c. say, that true it is that the said sir W. L. did pay and satisfy to the said W. E. in his lifetime such sum of money as the said John hath above in his said plea above alledged, part, &c. for which the said bond in the said first and second counts, &c. was given, as the said John hath in, &c. alledged; but protesting, that the said sir W. L. did not seal, &c. *by way of new security* for the residue of the said principal and interest then remaining due and owing on the said bond of the said sir W. L. in the said first and second counts, &c. and interest, in manner and form as the said John hath in his said last plea above alledged; and this the said plaintiffs pray may be inquired of by the country, &c.

S. LE BLANC.

On a banker's
draft at six days
payable to bear-
er, by Payee
against Drawer.

MIDDLESEX, to wit. Sir Jacob Wheate complains against George Robert Fitzgerald, being in the custody, &c. for that whereas the said defendant, on the twenty-fifth of June A. D. 1773, at Westminster, in the county aforesaid, according to the usage and custom of merchants from time immemorial used and approved within this kingdom, made his certain *bill of exchange* in writing, subscribed with his own hand, bearing date the same day and year aforesaid, and then and there directed the said bill of exchange to

Drummonds, (by the name and style of Messrs. Drummonds,) and by the said bill required them the said Drummonds, six days after the date of the said bill, to pay to the *bearer* thereof, the sum of seventy-three pounds ten shillings, of lawful, &c. for value received, and to place it to the account of the said defendant, and then and there delivered the said bill of exchange to the said plaintiff; which said bill of exchange he the said plaintiff afterwards, to wit, on the same day and year aforesaid, at Westminster aforesaid, in the said county, *presented* and shewed the said Drummonds for their acceptance thereof; but the said

Drummonds then and there absolutely refused to accept the said bill of exchange, nor have they the said Drummonds, nor either of them, paid the said sum of money contained in the same bill of exchange, or any part thereof, to the said plaintiff, although often requested by the said plaintiff so to do; of all which said premises he the said defendant afterwards, to wit, on the same day and year aforesaid, at Westminster aforesaid, in the said county, had notice; by reason whereof, and according to the usage and custom of merchants aforesaid, the said defendant

defendant then and there became liable to the said plaintiff, *being the bearer* of the said bill, the said sum of money contained in the said bill of exchange, according to the tenor and effect thereof; and being so liable, he the said defendant, in consideration thereof, afterwards, to wit, on the same day and year aforesaid, at Westminster aforesaid, in the said county, undertook, and to the said plaintiff then and there faithfully promised to pay him the said sum of money therein mentioned and contained, according to the form and effect of the same bill, whenever he the said defendant should be thereunto afterwards requested: nevertheless, &c. &c.

F. BULLER.

MIDDLESEX; *vs.* John Hall, late of, &c. was attached to answer Fisher Adamson in a plea, &c. that whereas the said John, before and at the time of the making of the promise and undertaking of the said John hereafter next mentioned, was owner of certain ships or vessels, to wit, of a certain ship or vessel called the Attempt, and of a certain other ship or vessel called the Audacious, and the said ships or vessels being shortly to sail upon a certain then intended voyage from the port of London, and one J. H. who intended to go and serve as a mariner in and on board one of such ships or vessels in its said intended voyage, having provided himself and been supplied by the said Fisher with certain necessaries for the said voyage, to a certain amount, to wit, to the amount of two pounds of lawful money of Great Britain, he the said John, before the sailing of either of the said ships or vessels, to wit, on, &c. at, &c. in, &c. drew a certain draft for the payment of the said sum of money, bearing date the same day and year aforesaid, upon the said John as such owner as aforesaid; and thereby, for and on account of the (1) *wages that might become due to him* the said J. H. as such mariner as aforesaid, and then and there required the said John, one month after the sailing, to pay to his the said J. H.'s order the sum of two pounds sterling, *in case he should go* (that is to say, sail) on the said intended voyage in either the said ship or vessel called the Attempt, or in the said ship or vessel called the Audacious; and having drawn such draft or order for the payment of such money as aforesaid, and the said debt or sum of two pounds so due and owing to the said Fisher being still unpaid, he the said J. H. to enable the said Fisher to obtain payment and satisfaction of the same, afterwards, and before his sailing in either of the said ships or vessels in such voyage as aforesaid, afterwards, to wit, on, &c. *indorsed and delivered over* to the said Fisher the said draft or order for the payment of the money so drawn upon the said J. H. as aforesaid, and thereby duly authorised, ordered, and required the said John to pay the said sum of two pounds therein mentioned to the said Fisher, at the time *and on the event* therein specified as aforesaid; and afterwards, to wit, on, &c. did go and sail from the said port of London in the said ship or vessel called, &c. on her

Declaration by original against the owner of a ship, by plaintiff, who had furnished one of the sailors with necessaries, for which the sailor had given the plaintiff a draft on the defendant, who promised to pay it, but did not.

(1) 1 Wm. 462.

ASSUMPSIT GENERAL.—ON BILLS OF EXCHANGE.

aforesaid intended voyage; whereof, and of which said several premises, he the said John afterwards, and before the making of his promise and undertaking hereafter next mentioned, to wit, on, &c. at, &c. had notice; and thereupon afterwards, and after the sailing of the said last-mentioned ship or vessel on her said intended voyage as aforesaid, to wit, on, &c. at, &c. in, &c. in consideration of the several premises aforesaid, and also in consideration that the said Fisher was still unpaid his debt or demand of two pounds so due and owing to him from the said J. H. as aforesaid, he the said John undertook, and then and there faithfully promised the said Fisher to pay him the said Fisher the said sum of two pounds in the said draft mentioned, upon the said twenty-ninth day of the said month of December A. D. 1786: and although upon the said twenty-ninth day of, &c. the said debt or sum of two pounds so due and owing from the said J. H. as aforesaid remained and was still due and owing unto the said Fisher; and although the said John had then and there, to wit, at, &c. notice thereof, and was then and there required to pay the said sum of two pounds in the said draft mentioned unto him the said Fisher, according to the tenor and effect of his aforesaid promise and undertaking in that behalf; yet the said John, not regarding his said promise and undertaking, but contriving and fraudulently intending to deceive the said Fisher in this behalf, did not, on, &c. pay, nor hath he as yet paid, the said sum of two pounds in the said draft mentioned, or any part thereof, to the said Fisher, but he so to do then and there, and always from thence hitherto, hath neglected and refused so to do; nor hath he the said J. H. as yet paid to the said Fisher the said debt or sum of two pounds so due and owing to him from the said J. H. as aforesaid, or any part thereof, but the same is still wholly due and unpaid to him the said Fisher, to wit, at, &c. And whereas, &c. (Goods sold to the plaintiff John Hall, and delivered to J. H. 3d Count, Money laid out, &c. &c.; account stated, and common conclusion.)

3d Count.

V. LAWRENCE.

BY FIRST INDORSEE.

Indorsee against
Acceptor of an
inland bill of
exchange.

FOR that whereas, at the several times hereafter mentioned, the said plaintiff and defendant, and one D. C. were persons residing, trading, and using commerce within this kingdom, to wit, at, &c. and being so resident, &c. he the said D. C. heretofore, to wit, on, &c. at, &c. according to the custom of merchants, from time immemorial used and approved of within this kingdom, made and drew his certain bill of exchange in writing, his own proper hand being thereto subscribed, and the said bill, bearing date the day and year aforesaid, then and there directed to said (defendant), by the name of, &c. and by the said bill then and there required the said (defendant) two months after date thereof, to pay to him the said D. C.'s own order thirty pounds value received of him the

the said D. C. which said bill of exchange he the said (defendant) afterwards, to wit, on, &c. at, &c. *accepted*, according to the *Acceptance.* said custom of merchants; and the said D. C. to whose order the payment of the said sum of money, in the said bill specified, was to be made as aforesaid, afterwards, and before the payment of the said sum of money in the said bill specified, or any part thereof, to wit, on, &c. at, &c. *indorsed* the said bill, his own proper hand *Indorsement.* being thereto subscribed, according to the said custom, and by that indorsement appointed the said sum of money, in the said bill specified, to be paid to the said plaintiff, and then and there delivered the said bill, so indorsed, to the said (plaintiff); of which said indorsement so made on the said bill as aforesaid, he the said (defendant) afterwards, to wit, on, &c. at, &c. had notice; by means whereof, and according to the said custom and law of merchants, the said (defendant) became liable to pay to the said (plaintiff) the said sum of money in the said bill specified, according to the tenor and effect of the said bill and his aforesaid acceptance thereof; and the said indorsement so made thereon as aforesaid; and being so liable, he the said (defendant), in consideration thereof, afterwards, to wit, on, &c. at, &c. undertook, &c. to the said (plaintiff), to pay him the said sum of money in the said bill specified, according to the tenor and effect of the said bill, and of the said acceptance and indorsement aforesaid. (2d Count, for money had and received. 3d ditto, Money lent and advanced. 4th, Laid out, expended, &c.: account stated, and common conclusion.)

The defendant alleged the acceptance to be a forgery. I have looked into the books upon the defence intended to be set up to this action, and I am induced to think, that if the forgery can be clearly made out, (but not otherwise,) it will be an answer to the action. I have not found any case exactly in point, but I think that there is one that nearly goes the length of the defence. It is that of Cooper and Le Blanc, 2. Stra 1051. when, though the chief justice refused to let the defendant (the indorser of a note, who, upon its being brought to him, acknowledged the indorsement, and said the bill

should be paid) shew a forgery of indorsement by similitude of hands, yet the case goes on to say, that the judge was inclined to allow proof of actual forgery, if the defendant could have shewn it; but not doing so, plaintiff obtained a verdict: from whence it seems to follow, that proof of actual forgery will be an answer to the action; and for my own part I am of that opinion; yet at the same time it is so difficult to make it out, (without the evidence of defendant, which cannot of course be had,) that it may be worth the plaintiff's while to risk the action. V. Jones.

FOR that whereas before and at the time of the making of the bill of exchange hereafter mentioned, and from thence, until, and at and after the making of the said promise and undertaking of the said defendant hereafter next mentioned, the said plaintiff and the defendant, and certain other persons using the stile and firm of, &c. were persons residing, trading, and using commerce within this kingdom, to wit, at, &c. And whereas the persons using the stile and firm of, &c. were, at the respective times hereafter mentioned, *Indorser v. Acceptor on an inland bill of exchange, payable to the order of 4d persons who are partners.*

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mentioned, partners and joint dealers together in the way of their trade and commerce, as were the said other persons using the name, stile and firm of, &c. in the way of their trade and commerce, to wit, at, &c. And the said plaintiff, defendant, and the said persons using the stile and firm of, &c. and the said other persons using the stile and firm of, &c. as aforesaid, being so resident, trading, and using commerce as aforesaid; and the said persons using, &c. as well as those using, &c. as aforesaid, being such partners and joint dealers together as aforesaid, the said persons so using, &c. as aforesaid, on, &c. at, &c. according to the custom of merchants from time immemorial, &c. made their certain bill of exchange in writing, their said stile of, &c. being thereto subscribed, to wit, in the hand-writing of one of them, and the said bill bearing date on, &c. then and there directed to said defendant by the name of, &c. and thereby required him said defendant, two months after the date thereof, to pay to the order of the said persons using the said stile and firm of, &c. six pounds two shillings for value received, as advised by them the said persons using, &c.; which said bill of exchange the said defendant afterwards, and before the payment of the money specified, or of any part thereof, and also before the time appointed for the said bill for the payment thereof, to wit, on, &c. at, &c. at sight thereof accepted, according to the said custom of merchants: and the said persons using, &c. to whose order the payment of the said sum of money, contained in the said bill, was to be made, afterwards, and before the payment of the said sum of money contained in the said bill, or any part thereof, and also before the time appointed by the said bill for the payment thereof, to wit, on, &c. at, &c. indorsed the said bill, their aforesaid stile, &c. being thereon written, to wit, in the hand-writing of one of them, and by the indorsement appointed the contents of the said bill to be paid to said plaintiff, and then and there delivered the said bill so indorsed to the said plaintiff; of which said indorsement so made on the said bill as aforesaid, he said defendant afterwards, to wit, on, &c. at, &c. had notice; by reason whereof, and of the aforesaid custom and the law of merchants, he the said defendant became liable to pay to said plaintiff said sum of money in said bill specified, according to the tenor and effect of the said bill, and of his said acceptance thereof, and of the said indorsement so made thereon as aforesaid; and being so liable, he said defendant, in consideration, &c. undertook, &c. according to the tenor and effect of his said bill and his said acceptance thereof, and of the said indorsement so made thereon as aforesaid.

Acceptance.

Indorsement.

First Indorser v. acceptor.

FOR that whereas one W. S. heretofore, to wit, on, &c. at, &c. according to the custom of merchants; made and drew his certain bill of exchange in writing, bearing date, &c. aforesaid, upon the said defendant, by the name of, &c. and thereby required the said defendant to pay to one J. C. by the name of, &c.

or order, two months after the date of the said bill, one hundred pounds for value received, and then and there delivered the said bill to the said J. C. which said bill of exchange he the said defendant afterwards, to wit, on, &c. aforesaid, at, &c. according to the custom of merchants in that particular, accepted: and the said J. C. to whom or to whose order the payment of the said sum of money in the said bill mentioned was to be made as aforesaid, afterwards and before the payment of the said sum of money in the said bill specified, or any part thereof, to wit, on, &c. at, &c. *indorsed* the said bill according to the custom of merchants in that particular, and by that indorsement appointed the said sum of money in the said bill specified to be paid to the said (plaintiff), and then and there delivered the said bill so indorsed to the said (plaintiff); of which said indorsement so made on the said bill as aforesaid, he the said (defendant) afterwards, to wit, on, &c. at, &c. had notice; by means whereof, and according to the usage and custom of merchants, the said (defendant) became liable to pay to the said (plaintiff) the said sum of money in, &c. specified according to the tenor and effect of the said bill, and of the aforesaid acceptance and indorsement thereof; and being so liable, &c. (Promise to pay, according to the tenor, &c. of said bill, and of the aforesaid acceptance and indorsement thereof.)

GO on as in the last declaration, till you have stated the *indorsing*; then say, Of which said indorsement so made on the said bill as aforesaid, the said (defendant) afterwards, to wit, on the same day and year aforesaid, at, &c. aforesaid, had notice: and the said J. further saith, that the said bill afterwards, and after the time appointed by the said bill for payment of the money therein mentioned, to wit, on 24th January 1765, to wit, at, &c. aforesaid, was shewn and *presented* to the said (defendant), &c. (Vide Fourth Indorsee v. Second Indorser.)

MIDDLESEX, *ss.* For that whereas before and at the time of the making of the bill of exchange hereafter mentioned, and from thence, until, and at, and after the making of the promise and undertaking of the said defendant herein after next mentioned, the said John Alderson and Thomas Clarke, and certain other persons using the stile and firm of Taylor Lloyd and Co. and certain other persons using the stile and firm of Nelson and Handasyd, were persons residing, trading, and using commerce within this kingdom, to wit, at Westminster, in the said county of Middlesex: And whereas the said persons using the firm and stile of Taylor Lloyd and Co. were, at the respective times hereafter mentioned, partners and joint dealers together in the way of their trade and commerce, as were the said other persons using the stile and firm of Nelson and Handasyd, in the way of their trade and commerce, to wit, at Westminster aforesaid; and the said John Alderson,

Indorsee v. Drawer.

Indorsee v. Acceptor on an inland bill payable to the order of three persons who are partners.

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Alderson, Thomas Clarke, and the said persons using the stile and firm of Taylor Lloyd and Co. and the said other persons using the stile and firm of Nelson and Handasyd, being so resident, trading, and using commerce as aforesaid; and the said persons using the stile and firm of Taylor Lloyd and Co. as well as those using the stile and firm of Nelson and Handasyd, being such partners and joint dealers together as aforesaid; the said persons so using the stile and firm of Nelson and Handasyd, on the ninth day of September in the year of Our Lord 1780, to wit, at Westminster aforesaid, according to the custom of merchants from time immemorial used and approved of within this kingdom, made their certain bill of exchange in writing, their said stile and firm of Nelson and Handasyd being thereto subscribed, to wit, in the hand-writing of one of them, and the said bill bearing date the day and year aforesaid, then and there directed to the said Thomas Clarke, by the name of Mr. Thomas Clarke ironmonger, Oxford-street, 462, London, and thereby required him the said Thomas Clarke, two months after date, to pay to the order of the said persons using the stile and firm of Taylor Lloyd and Co. six pounds two shillings, for value received, as advised by them the said persons using the stile and firm of Nelson and Handasyd; which said bill of exchange he the said Thomas Clarke afterwards, and before the payment of the money therein specified, or of any part thereof, and also before the time appointed by the said bill for payment thereof, to wit, on the day and year aforesaid, at Westminster aforesaid, accepted, according to the said custom of merchants; and the said persons using the stile and firm of Taylor Lloyd and Co. to whose order the payment of the money contained in the said bill was to be made, afterwards, and before the payment of the said sum of money contained in the said bill, or of any part thereof, and also before the time appointed by the said bill for payment thereof, to wit, on the day and year aforesaid, at Westminster aforesaid, indorsed the said bill, their aforesaid stile and firm of Taylor Lloyd and Co. being thereon written, (to wit, in the hand-writing of one of them) and by the said indorsement appointed the contents of the said bill to be paid to the said John Alderson, and then and there delivered the said bill so indorsed to the said John Alderson; of which said indorsement so made on the bill as aforesaid, the said Thomas Clarke afterwards, to wit, on the day and year aforesaid, at Westminster aforesaid, had notice: by reason whereof, and of the aforesaid custom and the law of merchants, he the said Thomas Clarke became liable to pay to the said J. Alderson the said sum of money in the said bill specified, according to the tenor and effect of the said bill, and of his said acceptance thereof, and of the said indorsement so made thereon as aforesaid; and being so liable, he the said T. Clarke, in consideration, &c. promised to pay, &c. according to the tenor and effect of the said bill, and of his acceptance thereof, and of the said indorsement so made thereon as aforesaid. (Add a Count for money had and received, and common conclusion.)

LONDON,

LONDON, ff. Defendants were attached to answer plaintiffs in a plea of trespass on the case, &c. and whereupon the said plaintiffs, by A. B. their attorney, complain, for that whereas the said defendants, on 30th April 1788, at, &c. according to the usage and custom of merchants, made their bill of exchange, the proper hand-writing of each of them being thereunto subscribed, bearing date the same day and year aforesaid, and then and there directed the said bill of exchange to certain persons carrying on trade and commerce under the names, style, and firm of Messrs. Shaw Stevens and Co. by the names and descriptions of, &c. and thereby required the said Shaw Stevens and Co. two months after date, to pay to the order of Mr. John Jones five hundred and eighty pounds value received, and afterwards, to wit, on the same day and year aforesaid, to wit, at, &c. caused the said bill of exchange to be indorsed with the name of John Jones, in the usual and customary manner and form of indorsing and negotiating bills of exchange, to the intent and for the purpose of making the said bill of exchange negotiable like other bills of exchange, according to the said usage and custom of merchants: and the said plaintiffs in fact say, that the said defendants afterwards, to wit, on, &c. at, &c. delivered the said bill of exchange, so indorsed as aforesaid, to certain persons carrying on trade and commerce under the name, style, and firm of Henry Mather and Co. to the intent and for the purpose of being negotiated by the said Henry Mather and Co. like other bills of exchange, according to the usage and custom of merchants; and the said Henry Mather and Co. afterwards, to wit, on, &c. at, &c. according to the said usage and custom of merchants, indorsed the said bill of exchange, the proper hand-writing of one of them for himself and the other of them in their said joint and copartnership name, style, and firm of Henry Mather and Co. being thereunto subscribed, and by that indorsement appointed the contents of the said bill of exchange to be paid to the said plaintiffs; and the said plaintiffs afterwards, to wit, on, &c. at, &c. according to the said usage and custom of merchants, caused the said bill of exchange, so indorsed as aforesaid, to be shown and presented to the said Shaw Stevens and Co. for their acceptance thereof; and the said Shaw Stevens and Co. were then and there requested to accept the said bill of exchange, but the said Shaw Stevens and Co. did not then, or at any other time, accept the said bill of exchange, but then and there wholly refused and neglected so to do, to wit, at, &c.: and the said plaintiffs aver, that at the time of the making of the said bill of exchange there was not, nor is there any such person as John Jones in the said bill of exchange and indorsement thereon mentioned, but that the said name was, and is, merely fictitious, to wit, at, &c.; of all which premises the said defendants afterwards, to wit, on, &c. at, &c. had due notice; by reason of which said several premises, according to the said usage and custom of merchants, they the said Roger and Booth then and there became and were liable to pay to the said plaintiffs the said sum of

Declaration.

Indorsee against Drawers, on an inland bill of exchange, payable to a fictitious payee (1)
 1st Count states the facts, and that defendants, (drawers,) after making the bill payable to a fictitious person, indorsed it in such name, and negotiated it.

(1) 3. T. R. 174.
 Tatlock v. Harris, 3 T. R. 182.
 Vere and Lewis, Minet and Gibson, 3 T. R. 482.
 3 T. R. 183.

Averment that there was not any such person as John Jones.

money

ad Count states it to be a bill payable to such fictitious person, or bearer, and that plaintiffs bring this action as bearers (2)

(2) Vere and Lewis, Minet and Gibson, ante.

3d Count considers it as a negotiable bill of exchange duly indorsed to plaintiffs.

Indorses against Acceptor of a bill of exchange accepted, to be paid at a particular place, but refused payment when it became due.

money in the said bill of exchange contained; and being so liable, &c. (assumpsit accordingly, &c.) And whereas also the said defendants afterwards, to wit, on, &c. at, &c. according to the usage and custom of merchants, made and drew their certain other bill of exchange, the proper hand-writing of each of them being thereunto subscribed, bearing date the same day and year last aforesaid, and then and there directed the said last-mentioned bill of exchange to the said persons so as aforesaid carrying on trade and commerce under the names, style, and firm of Shaw Stevens and Co. by the names and description of Shaw Stevens and Co. London, and thereby required the said persons so using the names, firm, and style of Shaw Stevens and Co. two months after date, to pay to Mr. John Jones, or bearer, five hundred and eighty pounds value received: and the said plaintiffs aver, that they afterwards, to wit, on, &c. at, &c. became and were, and still continue to be, the bearers and proprietors of the said last-mentioned bill of exchange; and that they so being bearers and proprietors of the said last-mentioned bill of exchange, afterwards, to wit, on, &c. at, &c. according to the usage and custom of merchants, shewed and presented the said last-mentioned bill of exchange to the said persons so using the names, style, and firm of Shaw Stevens and Co. for their acceptance thereof, and then and there requested the said persons so using the names, style, and firm of Shaw Stevens and Co. to accept the said last-mentioned bill of exchange, but they did not then, or at any other time, accept the said last-mentioned bill of exchange, but then and there wholly neglected and refused so to do, to wit, at, &c.; of all which said premises the said defendants afterwards, to wit, on, &c. there had notice; by reason, &c. defendants became liable, &c.; and being so liable, (assumpsit accordingly, &c. accordingly. 3d Count as on a common bill,) payable to John Jones or order, and indorsed by him to Mather and Co. and by them to plaintiffs, against the drawers for non-acceptance; common Counts, and breach.)

ALLAN CHAMBER.

MIDDLESEX, to wit. For that whereas, at the several times hereafter mentioned, the said plaintiffs and the said defendant, and one R. B. esquire, were persons residing, trading, and using commerce within this kingdom of England, to wit, at Westminster aforesaid, in the county aforesaid; and being so residing, trading, and using commerce as aforesaid, the said R. B. on, &c. at, &c. made his certain bill of exchange in writing, subscribed with his own proper hand, according to the custom of merchants from time immemorial used and approved of, bearing date the same day and year aforesaid, and then and there directed the said bill to the said defendant, by the name and description of, &c. and by the said bill requested the said defendant, seventy days after date, to pay to his the said R. B.'s order, three hundred pounds value received by him the said R. B.; which said bill afterwards, and before the payment of the said sum of money mentioned in the said bill of exchange, or any part thereof, and also before the time appointed by the said R. B. for the payment thereof, to wit, on, &c.

at,

at, &c. was shewn and *presented*, according to the usage and custom of merchants, to the said defendant for his acceptance thereof; and thereupon the said defendant, according to the said usage and custom of merchants, upon sight thereof accepted *the said bill, to be paid when the same became due and payable, according to the tenor and effect thereof, at the house of Messrs. R. C. and Co.*; and the said R. B. to whose order the payment of the said sum of money, in the said bill mentioned, was to be made, afterwards, and before the payment of the said sum of money mentioned in the said bill, or any part thereof, and also before the time appointed by the said bill for the payment thereof, to wit, on, &c. at, &c. according to the said usage and custom of merchants, indorsed the said bill, his own proper hand being thereunto subscribed, and by the said indorsement he the said R. B. appointed the said sum of money, mentioned in the said bill, to be paid to the said plaintiffs, and then and there delivered the said bill, so indorsed as aforesaid, to the said plaintiffs: "and the said plaintiffs aver, that afterwards, and when the said sum of money, mentioned in the said bill, had become due and payable, according to the tenor and effect thereof, to wit, on, &c. at, &c. they the said plaintiffs, according to the usage and custom of merchants, presented and shewed the said bill of exchange at the said house at which the same was, according to the said acceptance thereof, to be paid, and then and there requested payment thereof, according to the tenor and effect of the said bill, and of the said acceptance thereof, and of the said indorsement so made thereon as aforesaid; but the said defendant did not, nor did any other person or persons whatsoever, at the said time when the said bill was so shewn and presented for payment as aforesaid, or at any other time whatsoever, pay the said sum of money mentioned in the said bill, or any part thereof, but payment of the said bill of exchange, at the said time when the same was so shewn and presented as aforesaid, was refused at the said house;" of all which said premises the said defendant afterwards, to wit, on, &c. at, &c. had notice: by reason whereof, and according to the said custom and by the law of merchants, he the said defendant became liable to pay to the said plaintiffs the said sum of money mentioned in the said bill, (a) *when he the said defendant should be thereto afterwards requested*; and being so liable, he the said defendant, in consideration thereof, afterwards, to wit, on, &c. at, &c. undertook, &c. to pay them the said sum of money mentioned in the said bill, (b) *when he the said defendant should be thereto afterwards requested*. And whereas, &c. &c. (2d Count, same as the first, only omitting what is in italic and within inverted commas, and inserting what is in the notes. Add the money Counts, &c. &c.

(a) According to the tenor and effect of the said last-mentioned bill, and the indorsement so made thereon.

(b) According to the tenor and effect of the said last-mentioned bill, and the indorsement so made thereon as last aforesaid, and his acceptance thereof as last aforesaid.

LONDON,

Declaration by originator B. R. upon a bill of exchange drawn in favour of a (1) fictitious person, and indorsed by the fictitious person, and afterwards negotiated in the hands of an innocent indorsee, who brings this action against the drawer.

LONDON, to wit: J. E. late of, &c. cotton manufacturer, was attached to answer B. C. C. T. B. R. S. and W. T. in a plea of trespass on the case, &c.; and whereupon the said plaintiffs, by A. B. their attorney, complain, for that whereas the said plaintiffs and the said defendant, and certain persons using the name, style, and firm of Livesey Hargrave and Co. were persons respectively residing, trading, and using commerce within this kingdom, to wit, at, &c. in, &c.; and the said persons so using the name, firm, and style of L. H. and Co. were at those several times partners and joint dealers in their said trade and commerce, under their aforesaid name, style, and firm; and the said plaintiffs and the said defendant, and the said persons so using the name, style, and firm of L. H. and Co. being so partners and joint dealers as aforesaid, he the said defendant on, &c. to wit, at, &c. in, &c. according to the usage and custom of merchants from time immemorial used and approved of, made his certain bill of exchange in writing, with his own proper hand-writing thereto subscribed, bearing date the same day and year aforesaid, and then and there delivered the said bill of exchange so subscribed to the said persons using the name, style, and firm of L. H. and Co. by the name and description of, &c.; by which said bill of exchange the said defendant required the said persons so using the name, style, and firm of L. H. and Co. three months after date, to pay to Mr. C. G. or order one thousand five hundred and fifty-one pounds value received, as advised, and then and there delivered the said bill of exchange to the said persons so using the name, style, and firm of L. H. and Co. and authorized them to negotiate and indorse the same in the name of C. G. and thereby to raise money thereon for the use of the said persons so using the name, style, and firm of L. H. and Co.; and the said plaintiffs aver, that when the said bill of exchange was so made as aforesaid, or at any time afterwards, there was no such person as C. G. the supposed payee in the said bill of exchange, but the same was merely fictitious, to wit, at, &c.; which said bill of exchange the said persons so using the name, style, and firm of L. H. and Co. afterwards, to wit, on, &c. at, &c. by one (2) A. G. being a person thereunto in that respect lawfully authorized, upon sight thereof accepted, according to the usage and custom aforesaid; and the said persons so using the name, style, and firm of L. H. and Co. being so authorized as aforesaid, afterwards, and before the payment of the said sum of money therein contained, or any part thereof, and before the time thereby appointed for such payment, to wit, on, &c. at, &c. negotiated and indorsed the said bill in and with the name of the said C. G. and by that indorsement, in the name of the said C. G. appointed the contents of the said bill of exchange to be paid to the said plaintiffs, and thereby raised the money thereon for the use of the said persons so using the name, style, and firm of L. H. and Co. and then and there delivered the said bill of exchange so indorsed to the said plaintiffs, who thereupon then and there, upon the credit thereof, advanced to the said persons so using the name, style, and firm

(v) Tatlock v. Harris, 3 T.R. 174-182.

Averment that the payee was a fictitious person. Bill accepted by the drawer's (2) agent.

Ann. 74.

Str. 1000.

Bavensstock v.

Titter, B. R.

Sittings in M.T.

24 G. III.

Str. 817.

2. Will 9.

Buir. 1672.

3. T. Rep. 185.

Indorsement.

Averment that plaintiffs raised money for defendants, on the credit of such fictitious indorsement.

firm of L. H. and Co. the said sum of money in the said bill of exchange mentioned; of all which premises, he the said defendant afterwards, to wit, on, &c. at, &c. had notice: and the said plaintiffs in fact say, that afterwards, and when the said bill of exchange became due and payable, to wit, on, &c. at, &c. they the said plaintiffs shewed and presented the said bill of exchange to the said persons so using the name, style, and firm of L. H. and Co. for the payment of the said sum of money therein contained, and then and there required them to pay the same; but the said persons so using the name, style, and firm of L. H. and Co. did not, nor would then or at any other time whatsoever, pay the said sum of money in the said bill of exchange contained, or any part thereof, but then and there wholly refused to do; of all which premises the said defendant afterwards, to wit, on, &c. at, &c. had notice; by reason whereof, and according to the said custom and by the law of merchants, the said defendant became liable to pay to the said plaintiffs the said sum of money in the said bill of exchange contained; and being so liable, he the said defendant, in consideration thereof, afterwards, to wit, on, &c. at, &c. undertook, &c. the said sum mentioned in the said bill of exchange, when he should be thereto afterwards requested. And whereas also the said plaintiffs, and the said defendant, and the said persons so using, &c. being so residing, &c. commerce as before mentioned; and the said persons so using, &c. of L. H. and Co. being so partners and joint dealers as aforesaid, he the said defendant, on, &c. at, &c. according to, &c. made, &c. with his own proper hand thereto subscribed, bearing date the same day and year last aforesaid, and then and there directed the said last-mentioned bill of exchange to the said persons so using the name, style, and firm of L. H. and Co. by the names and description of, &c. and thereby requested them, three months after date, to pay to Mr. C. G. or bearer, one thousand five hundred and fifty-one pounds value received; and the said plaintiffs aver, that they the said plaintiffs afterwards, to wit, on, &c. at, &c. became and were, and still continue *the bearers and proprietors* of the said bill of exchange, in due form of law; and that they the said plaintiffs, so being *bearers and proprietors* of the said bill, afterwards, and when the said bill of exchange became due and payable, to wit, on, &c. at, &c. shewed and presented the said last-mentioned bill to the said persons so using the name, style, and firm of L. H. and Co. and then and there requested them to pay them the said plaintiffs the said sum of money contained in the said last-mentioned bill, according to the tenor and effect thereof, which they the said persons so using the name, style, and firm of L. H. and Co. refused to do; whereof the said defendant afterwards, to wit, on, &c. at, &c. had notice: by reason whereof, and according to the said custom, and by the law of merchants, the said defendant became liable to pay to the said plaintiffs the said sum of money in the said bill of exchange contained; and being so liable, he the said defendant, in consideration thereof, afterwards, to wit, on, &c. at, &c. undertook, &c. to pay them the said

Presented for
payment.

2d. Court putting the acceptance of the bill, and shewing that plaintiffs became legal (3) *bearers* thereof, and that defendant became liable to pay it to them as such, but refused, &c.

(3) Vere v. Lewis, 3. T. R. 182.
Miner v. Gibson, 3. T. R. 422.

Presented for
payment.

said

ASSUMPSIT GENERAL.—ON BILLS OF EXCHANGE.

said last-mentioned sum of money, in the said last-mentioned bill of exchange contained, when he the said defendant should be thereto afterwards requested. (Add the money Counts; account stated, &c. &c. Plea, general issue, non-assumpsit, and issue thereon.)

The form of a bill of exception for the above Declaration, in case it had been necessary and adviseable at the trial, but the jury found a special verdict.

Be it remembered, that in the Term of St. Hilary, in the twenty-ninth year of the reign of our sovereign lord George the Third, now king of Great Britain, &c. came B. C. C. T. B. R. S. and W. T. by A. B. their attorney, into the court of our said lord the king of the bench at Westminster, and impleaded J. E. in a certain plea of trespass on the case, on which the said B. C. C. &c. declared against him; for that whereas the said B. C. &c. (Copy to the end of the Declaration, except in the *nequicquam*, which must run thus:) But to pay the same to the said plaintiffs, or in any manner to satisfy them for the same, he the said J. E. to that time wholly refused, and did then refuse. (Stop here without laying the *damnum*, and go on to the plea in these words:) And therefore the said J. E. by C. D. his attorney, came and defended the wrong and injury, when, &c. and said, that he did not undertake and promise, in manner and form, as the said plaintiffs had above complained against him; and of that he put himself upon the country, and the said plaintiffs did the like. (Stop here without saying the usual words of the issue—therefore the sheriff is commanded, &c.—but go on as follows:) And afterwards, at the sittings at *nisi prius*, holden at the Guildhall of the city of London, in and for the said city, on, &c. in the twenty-ninth year of the reign of the said lord the king, before the right honourable Lloyd lord Kenyon, chief justice of our said lord the king, assigned to hold pleas before the king himself, John Way, gent. being associated to the said chief justice, according to the form of the statute in that case made and provided, the aforesaid issue between the said parties as aforesaid came on to be tried by a jury of the said city of London, for that purpose duly impanelled, that is to say, (here insert the jurors names,) good and lawful men of the said city of London; at which day came, as well the said plaintiffs as the said J. E. by their respective attorneys; and the jurors of the jury aforesaid impanelled to try the said issue, being also called, also came, and were then and there in due manner chosen and sworn to try the same issue: and upon the trial of the said issue, the counsel for the said plaintiffs did then and there prove and give in evidence, that (here insert the evidence); and the counsel for the said J. E. on behalf of the said J. E. did then and there object to the said admission of such evidence: and did then and there insert, before the said chief justice, that (here insert the exceptions): but the said chief justice did then and there declare and deliver his opinion to the jury aforesaid, that the said evidence, on the part of the said plaintiffs, ought to be admitted; and that the said several matters so produced and proved on the part of the said J. E. were not sufficient to bar the said plaintiffs of their
afore-

aforesaid action against him the said J. E. and with that direction left the same to the said jury; and the jury aforesaid did then and there give their verdict for the said plaintiffs, and 1. damages; whereupon the said counsel for the said J. E. did then and there, on behalf of the said J. E. except to the aforesaid opinion of the aforesaid chief justice, and insisted on the said several matters and proofs as an absolute bar to the aforesaid action: and inasmuch as the said several matters, so produced and given in evidence on the part of the said J. E. by his counsel in the aforesaid action, objected and insisted on as a bar to the aforesaid action, do not appear by the record of the verdict aforesaid, the counsel for the said J. E. did then and there propose the aforesaid exception to the opinion of the said chief justice, and requested the said chief justice to put his seal to this bill of exceptions, containing the several matters so produced and given in evidence on the part of the said J. E. as aforesaid, according to the form of the statute in that case made and provided; and thereupon the aforesaid chief justice, at the request of the said counsel for the said J. E. did put his seal to this bill of exceptions, pursuant to the aforesaid statute in that case made and provided, on, &c. In the twenty-ninth year of the reign of our sovereign lord the now king.

Westm. 2. 13;
Ed. 1.

LONDON, to wit. If Edward Parry shall make you secure, &c. then put, by sureties and safe pledges, John Browning, William Browning, and the reverend Henry Cox Mason, late of London, merchants; executors of the last will and testament of John Walter, late of Southwark in the county of Surry, woolstapler, deceased, so that they be before our lord the king on wheresoever, &c. to shew, for that whereas heretofore; in the lifetime of the said John Walter, to wit, on the eighth day of August A. D. 1791, at Braughing, to wit, at L. aforesaid, in the parish of St. Mary le Bow, in the ward of Cheap, one Samuel Welsh made and drew his certain bill of exchange in writing, according to the custom of merchants from time immemorial used and approved of, bearing date the day and year aforesaid, upon the said John W. by the name and description of Mr. John Walter, woolstapler, Borough, London; and by the said bill requested the said John W. two months after date, to pay to his the said Samuel Welsh's order eighty-nine pounds eight shillings, value received of him the said S. W.; which said bill afterwards, and before the payment of the said sum of money therein mentioned, or any part thereof, to wit, on the day and year aforesaid, at L. aforesaid, in the parish and ward aforesaid, the said J. W. according to the said usage and custom of merchants, upon sight thereof accepted, to pay the same at Sir James Sanderson and Company's; and the said Samuel W. to whose order the payment of the said sum of money in the said bill was to be made as aforesaid, afterwards, and before the payment of the said bill, or any part thereof, to wit, on the

Præcipe for Declaration by original, in B. R. on an inland bill of exchange, Indorsee v. Executors of Acceptor, who died before the bill became due: Bill accepted at a particular place.

First indorsement.

same day and year aforesaid, at L. aforesaid, in the parish and ward aforesaid, according to the usage and custom of merchants, *indorsed* the said bill, and by the said indorsement appointed the said sum of money mentioned in the said bill to be paid to the said E. P. and then and there *delivered* the said bill, so indorsed, to the said E. P.; of which said indorsement so made on the said bill, he the said J. W. afterwards, in his lifetime, to wit, on the day and year aforesaid, at L. aforesaid, in the parish and ward aforesaid, had *notice*; by reason whereof, and according to the said custom, and by the law of merchants, he the said J. W. in his lifetime became liable to pay to the said E. P. the said sum of money mentioned in the said bill, according to the tenor and effect of the said bill, and of the said indorsement so made thereon as aforesaid; and being so liable, he the said J. W. in *consideration* thereof, afterwards, to wit, on the same day and year aforesaid, at L. aforesaid, in the parish and ward aforesaid, undertook, and then and there faithfully promised the said E. P. to pay him the said sum of money mentioned in the said bill, according to the tenor and effect of the said bill, and his said acceptance thereof, and the said indorsement so made thereon as aforesaid. (2d Count, for money had and received; 3d, Account stated.) Yet the said (defendants), not regarding the said several promises and undertakings so made as aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said (plaintiff) in this behalf, have not, nor hath any or either of them as yet paid the said several sums of money in those promises and undertakings mentioned, or any or either of them, or any part thereof, to the said (plaintiff), (although the said John Walter, the acceptor, after the making and accepting of the said bill, and before the same became due and payable, according to the tenor and effect thereof, *departed this life* without paying the same; and although to pay the same, and the said several sums of money in the said several other promises and undertakings mentioned, the said defendants were requested by the said plaintiff, after the time appointed by the said bill for payment of the money therein contained, and after the making of the said several other promises and undertakings, to wit, on the day and year last aforesaid, and often afterwards (a), as well at the said sir James Sanderson's, (or where the said bill was so accepted to be paid as aforesaid,) to wit, at L. aforesaid, in the parish and ward aforesaid, but they the said defendants so do have respectively hitherto wholly refused, and still do refuse, to the damage of the said plaintiff of one hundred pounds, as it is said.

T. BARROW.

(a) An acceptance to pay at his banker's, does not bind the holder to present there. *Smith v. De la Fontaine*,

B. R. T. 25 Geo. 3. *Bishop v. Chisty*, Str. 1195.

SECOND INDORSEE.

GO on as in the former precedents. And the said R. M. to whom or to whose order the payment of the said sum of money in the said bill specified was by virtue of the said *indorsement* thereof to be made, afterwards and before the payment of the said sum of money in the said bill specified, or of any part thereof, to wit, on, &c. at, &c. aforesaid, indorsed the said bill according to the custom of merchants in that particular, and by that indorsement appointed the said sum of money in the said bill specified to be paid to A. M. and then and there delivered the said bill so indorsed to the said A. M. and the said A. M. to whom or to whose order the payment of the said sum of money in the said bill specified was by virtue of the said last-mentioned indorsement to be made, afterwards and before the payment of the said last-mentioned sum of money in the said bill specified, or of any part thereof, to wit, on, &c. at, &c. aforesaid, *indorsed* the said bill according to the custom of merchants in that particular, and by that indorsement appointed the said sum of money in the said bill specified to be paid to the said plaintiff, and then and there delivered the said bill so indorsed to the said plaintiff; of which said several indorsements so made on the said bill as aforesaid, he the said defendant afterwards, to wit, on, &c. at, &c. had notice: by means whereof, and according to the usage and custom of merchants, he the said defendant became liable to pay to the said plaintiff the said sum of money in the said bill specified, according to the tenor and effect of the said bill, and of the aforesaid acceptance, and of the several indorsements thereof; and being so liable, &c. &c.

Second Indorsee v. Acceptor.

First Indorsee ment.

Second Indorsee ment.

MIDDLESEX, *ss.* Richard Edwards complains of John Hale, being in the custody of the marshal of the Marshalsea of our lord the now king before the king himself, on a plea of trespass on the case, &c. for that whereas one Thomas Cotton heretofore, to wit, on the twenty-second day of November in the year of Our Lord 1785, at Yarmouth, to wit, at Westminster in the said county of Middlesex, according to the custom of merchants, made and drew his certain bill of exchange in writing, bearing date the day and year aforesaid, upon certain persons using the style or firm of Henry Hughes and Co. by the names, style, firm, and description of Messrs. Henry Hughes and Co. No. 52, Lime-street, London, and by the said bill then and there required the said persons so using the style or firm of Henry Hughes and Co. two months after the date of the said bill, to pay to the said John, by the name of Mr. John Hale, or order, one hundred and thirty-eight pounds four shillings and nine pence value in account, as per advice, and then and there delivered the said bill to the said John; *which* said bill the said persons so using the said

Declaration on a bill of exchange, Second Indorsee against Payee, after acceptance, payable at a particular place, but in default of payee, by the acceptor.

Acceptor accepted, payable at the Bank.

Payee indorsed it.

First Indorsee indorsed it to plaintiffs.

Bill presented at Bank for payment to the acceptor at the end of two months, including the days of grace.

Averment that acceptor refused payment.

style or firm of Henry Hughes and Co. afterwards, and before the payment of the said sum of money therein mentioned, or of any part thereof, to wit, on the day and year aforesaid, at Westminster aforesaid, in the county aforesaid, accepted, according to the aforesaid custom, by and in the name of Henry Hughes, payable (1) *at the Bank* (that is to say, the bank of England); and the said John, to whom, or to whose order, the payment of the said sum of money in the said bill mentioned was to be made, afterwards, and before the payment of the said sum of money in the said bill specified, or of any part thereof, to wit, on the day and year aforesaid, at Westminster aforesaid, in the county aforesaid, *indorsed* the said bill, according to the aforesaid custom, and by that indorsement appointed the said sum of money in the said bill mentioned to be paid to certain other persons using the style or firm of John Mosman and Co. and then and there delivered the said bill, so indorsed, to the said persons so using the said style or firm of John Mosman and Co.; and the said persons so using the said name, style, or firm of John Mosman and Co. to whom, or to whose order, the payment of the said sum of money in the said bill mentioned, was by virtue of the said last mentioned indorsement to be made, afterwards, and before the payment of the said sum of money in the said bill mentioned, or of any part thereof, to wit, on the same day and year aforesaid, at Westminster aforesaid, in the county aforesaid, *indorsed* the said bill according to the aforesaid custom, and by that indorsement appointed the said sum of money in the said bill mentioned to be paid to the said Richard, and then and there delivered the said bill, so indorsed, to the said Richard: and the said Richard further says, that at the end and expiration of the time appointed for the payment of the money in the said bill mentioned, to wit, on the twenty-fifth day of January, in the year of Our Lord 1786, the said bill was in due manner shewn and (2) *presented* to the said persons so using the style or firm of Henry Hughes and Co. at the Bank, where the same was so accepted, to be paid as aforesaid, for payment of the money therein mentioned; and the said persons so using the said style or firm of Henry Hughes and Co. were then and there required to pay unto him the said Richard the said sum of money in the said bill specified, according to the tenor and effect of the said bill, and the aforesaid acceptance and indorsement thereof: but the said Richard avers, that the said persons so using the said style or firm of Henry

(1) 1. T.R. 409. Str. 1195. Smith v. De la Fontaine, B. R. T. 25 Geo III. 1. T. R. 405. 2. T. R. 713.

(2) 1. Shower, 155 Str. 508. Str. 829. 1175. Bl. 1. 2. Willf. 353. Appleton v. Sweetapple, B. R. M. 23. Geo. III. 1. Show. 318, 319. Skinn. 410. Salk. 127. 132. Lord Raym. 444. 12. Mod. 244. Burr 674. Doug. 654. 1. T. R. 169. Lord Raym 743. Str. 1087. Mar. 3d Ed 33. Molloy,

b. 2. c. 10. f. 34. Doug. 497. 1. T. R. 408. Marius, 2d Ed 16. Malynes, b. 2. c. 5. f. 1. Lord Raym. 281 Str. 550. 416. 910. Bl. 1. See J'Anson v. Thomas, B. R. T. 24. Geo. III. Appleton v. Sweetapple, B. R. M. 23. Geo III. Str. 416. 1248. Lord Raym. 928. Str. 415, 416. 910. Salk. 132. Str. 508. 1175. Salk. 132. Str. 1175. And see Cases on Presentment, post.

Hughes and Co. did not, when the said bill was shewn and presented for payment as aforesaid, or at any other time whatsoever, pay the money therein mentioned, or any part thereof, to him the said Richard, but on the contrary then and there, to wit, at Westminster aforesaid, in the county aforesaid, *wholly refused* so to do, and therein wholly failed and made default; *whereof* the said John Hale afterwards, to wit, on the day and year last aforesaid, at Westminster aforesaid, in the county aforesaid, (3) *had notice*: *and thereby*, and by reason thereof, and of the several other premises aforesaid, and by force of the custom and law of merchants, he the said John Hale became liable to pay to the said Richard the said sum of money in the said bill mentioned, when he should be thereto afterwards requested; and being so liable, he the said John Hale in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at Westminster aforesaid, in the county aforesaid, undertook, and faithfully promised the said Richard, to pay him the said sum of money in the said bill mentioned, when he the said John Hale should be thereto afterwards requested. (2d Count, same as the first, leaving out the intermediate indorsement. 3d, Money had and received. 4th, Account stated, &c to, &c.)

Notice to payee, defendant; by which he became liable to pay; and being so, promised. (3) 1. Vent. 45. Com. 57. Salk. 127. Str. 707. Str. 792. Bull. Ni. Pri. 271. Bl. 747. 1. T. R. 167. Doug. 654. Salk. 131. Comb. 384. Lord Raym. 993. 3. Salk. 69.

FOR that whereas certain persons using the name, style, and firm of Brester and Co. by their partnership name of Brester and Company, heretofore, to wit, on the twenty-third day of October, in the year of Our Lord 1788, at London, in the parish of St. Mary le Bow, in the ward of Cheap, according to the custom of merchants, made and drew their certain bill of exchange in writing, bearing date the day and year aforesaid, upon certain persons using the name, style, and firm and description of Messrs. B. and H. Ely Place, London, and thereby requested the said persons using the name, style, and firm of B. and H. to pay to one Joseph Brester, in the said bill named by the name of Joseph Brester, or order, three months after the date thereof, three hundred and ninety pounds fourteen shillings value received, and then and there delivered the said bill to the said Joseph Brester: and the said defendant, to whom, or to whose order, the said sum of money in the said bill specified was to be paid as aforesaid, afterwards, and before the payment of the said sum of money in the said bill specified, or of any part thereof, to wit, on the day and year aforesaid, at London aforesaid, in the parish and ward aforesaid, *indorsed* the said bill, according to the said custom; and by that indorsement appointed the contents of the said bill to be paid to one James Morton, and then and there delivered the said bill, so indorsed, to the said James Morton; and the said J. M. to whom, or to whose order, the said sum of money in the said bill mentioned was by the said indorsement to be paid as aforesaid, afterwards, and before the payment of the said sum of money in the said bill mentioned, or of any part thereof, to wit, on, &c. year aforesaid, at, &c. aforesaid, *indorsed* the said bill, according to the said custom; and by that indorsement appointed the con-

Declaration on an inland bill of exchange, Second Indorsee v. Payee and First Indorser after presentment for acceptance and refusal act on brought immediately, (1) and before the time appointed for payment. (1) Vide Mth. Lord v. Mayor. Doug. 53. 3. Burr. 1087.

1st Indorsement,

Averment, bill
presented for
acceptance, and

of refusal to ac-
cept.

tents of the said bill to be paid to the said plaintiff, and then and there delivered the said bill, so indorsed, to the said plaintiffs: and the said plaintiffs aver, that afterwards, to wit, on, &c. at, &c. afore said, the said bill was in due manner, and according to the said custom, shewn and *presented* to the said persons so using the name, style, and firm of Bolt and Heggins, for acceptance thereof, and they were then and there requested to accept the same, but that the said persons so using the name, style, and firm of, &c. did not, nor did either of them, when the said bill was shewn and presented to them as afore said, accept the said bill, but on the contrary thereof, then and there wholly *refused* so to do, and therein wholly failed and made default; wherefore the said plaintiff caused the said bill to be protested for non-acceptance thereof, according to the custom of merchants in that particular, to wit, at, &c.; whereof, and of which said several premises, the said defendant afterwards, to wit, on, &c. at, &c. had notice; by means whereof, and of the said several premises, and by force of the custom and the law of merchants, he the said defendant became liable to pay to the said plaintiffs the said sum of money in the said bill specified, when he the said defendant should be thereto afterwards requested; and being so liable, &c. T. BARKOW.

Præcipe for Declaration by original in B. R. by a Second Indorse against Drawer, (who is also payee and indorser) of a bill of exchange drawn in Wales upon London, and accepted, but not paid when due.

MIDDLESEX, to wit. If Robert Albion Cox and William Merle shall make you secure, &c. then put, by sureties and safe pledges, Richard Piper late of Swansea in the county of Glamorgan, gentleman, so that he be before our lord the king on the morrow of All Souls, wheresoever, &c. to shew, for that whereas, at the several times hereafter mentioned, the said R. A. Cox and William Merle, and the said Richard Piper, and one Robert Morris, and also one Samuel Leir Phillips, were persons residing, trading, and using commerce within this kingdom of England, to wit, at Westminster in the county of Middlesex afore said; and being so residing, trading, and using commerce as afore said, he the said Richard Piper heretofore, to wit, on the nineteenth day of April in the year of Our Lord 1789, to wit, at Westminster afore said, in the said county of Middlesex, according to the usage and custom of merchants, made his certain bill of exchange in writing, with his own proper hand being thereunto subscribed, bearing date the same day and year afore said, and then and there directed the said bill of exchange to the said Robert Morris, by the name and description of Robert Morris esquire, No. 24, Lincoln's Inn, London, and thereby required the said Robert Morris, two months after date, to pay to his the said Richard Piper's *own order*, forty-nine pounds nineteen shillings and sixpence for value received, as advised by the said Richard Piper; which said bill the said Robert Morris afterwards, to wit, on the same day and year afore said, to wit, at Westminster afore said, in the said county of Middlesex, upon sight thereof, accepted, according to the said custom: and the said Richard Piper, to whose order the payment of the said sum

sum of money mentioned in the said bill was to be made as aforesaid, afterwards, and before the payment of the said sum of money mentioned in the said bill, or any part thereof, to wit, on the same day and year aforesaid, at Westminster aforesaid, in the said county of Middlesex, *indorsed* the said bill, his own proper hand being thereunto subscribed; and by that indorsement the said Richard Piper appointed the contents of the said bill to be paid to the said S. L. Philips, or order, and then and there delivered the said bill, so indorsed, to the said S. L. Philips; and the said S. L. Philips, to whom or to whose order the payment of the said sum of money mentioned in the said bill was to be made as last aforesaid, afterwards, and before the payment of the said sum of money mentioned in the said bill, or any part thereof, to wit, on the same day and year aforesaid, at Westminster aforesaid, in the county of Middlesex, *indorsed* the said bill, his own proper hand being thereto subscribed; and by that indorsement the said S. L. Philips appointed the contents of the said bill to be paid to the said R. A. Cox and W. Merle, and then and there delivered the said bill, so indorsed, to the said plaintiffs; of which said several indorsements so made on the said bill the said R. M. afterwards, to wit, on, &c. at, &c. in, &c. had notice: and the said plaintiffs aver, that afterwards, and at the end and expiration of the time appointed by the said bill for the payment of the money therein contained, to wit, on, &c. at, &c. in, &c. the said bill was duly shewn and *presented* to the said R. M. for payment thereof, and he the said R. M. was then and there requested to pay the same, according to the tenor and effect of the said bill, and his said acceptance thereof, and the said several indorsements so made thereon as aforesaid; but that he the said R. M. did not, nor would then and there pay, nor hath he as yet paid, the said sum of money mentioned in the said bill, or any part thereof, to the said plaintiffs, or either of them, but the payment thereof to them, or either of them, hath wholly neglected and refused; neither hath the said S. L. P. paid the same, or any part thereof, to the said plaintiffs, or either of them; of all which premises the said R. P. afterwards, and after the end of the said time limited by the said bill for the payment thereof, to wit, on, &c. at, &c. had due notice; and by reason of the premises, and according to the said custom, and by the law of merchants, he the said R. P. became liable to pay to the said plaintiffs the said sum of money in the said bill of exchange mentioned; and being so liable, he the said R. P. in consideration thereof, afterwards, to wit, on, &c. at, &c. in, &c. undertook, &c. And whereas, at the several times hereafter in this Count mentioned, the said plaintiffs, as such copartners, and under the style and firm aforesaid, and the said R. M. and also the said S. L. P. being so respectively residing, trading, and using commerce as aforesaid, he the said S. L. P. heretofore, to wit, on, &c. according to, &c. made, &c. &c. (Add the common Counts, and common conclusion.).

First Indorsement.

Second Indorsement.

Presentment for payment.

Second Count, as partners.

T. BARROW,

Michaelmas Term, 29th Geo. III.

Declaration on
an inland bill of
exchange, *Second*
Indorsee v. Payee,
drawn by part-
ners, payable to
one of the part-
ners or order,
where drawee
refused to ac-
cept.

FOR that whereas certain persons using the name, style, and firm of B. and Co. by their partnership name of B. and Co. heretofore, to wit, on the twenty-third day of October, in the year of Our Lord 1788, at London, in the parish of St. Mary-le-Bow, in the ward of Cheap, according to the custom of merchants, made and drew their certain bill of exchange in writing, bearing date the day and year aforesaid, upon certain persons using the name, style, and firm, of B. and C. by the name, style, firm, and description of Messrs. B. and C. Ely Place, London, and thereby requested the said persons using the name, style, and firm of B. and C. to pay to one A. B. in the said bill named by the name of A. B. or order, three months after the date thereof, three hundred and ninety pounds fourteen shillings value received, and then and there delivered the said bill to the said A. B.; and the said defendant, to whom or to whose order the said sum of money in the said bill specified was to be paid as aforesaid, afterwards, and before the payment of the said sum of money in the said bill specified, or of any part thereof, to wit, on the day and year aforesaid, at London aforesaid, in the parish and ward aforesaid, indorsed the said bill according to the said custom, and by that indorsement appointed the contents of the said bill to be paid to one C. D. and then and there delivered the said bill so indorsed to the said C. D.; and the said C. D. to whom or to whose order the said sum of money in the said bill mentioned was, by the said indorsement, to be paid as aforesaid, afterwards, and before the payment of the sum of money in the said bill mentioned, or of any part thereof, to wit, on the day and year aforesaid, at, &c. aforesaid, indorsed the said bill according to the said custom, and by that indorsement appointed the contents of the said bill to be paid to the said plaintiffs, and then and there delivered the said bill so indorsed to the said plaintiffs. And the said plaintiffs aver, that afterwards, to wit, on, &c. at, &c. aforesaid, the said bill was in due manner, and according to the said custom, shewn and presented to the said persons so using the name, style, and firm of B. and C. for acceptance thereof, and they were then and there requested to accept the same; but that the said persons so using the name, style, and firm of, &c. did not, nor did either of them, when the said bill was so shewn and presented to them as aforesaid, accept the said bill, but on the contrary thereof then and there wholly refused so to do, and therein wholly failed and made default; wherefore the said plaintiffs caused the said bill to be protested for non-acceptance thereof, according to the custom of merchants in that particular, to wit, at, &c.; whereof, and of which said several premises, the said defendant afterwards, to wit, on, &c. at, &c. had notice: by reason whereof, and of the said several other premises, and by force of the custom and the law of merchants, he the said defendant became liable to pay to the said plaintiffs the said sum of money in the said bill specified, when he the said defendant should be thereto afterwards requested; and being so liable, &c. THOS. BARROW.

THIRD

THIRD INDORSEE.

"YORKSHIRE, ff. If Edward Codd make you secure, &c. Declaration by
 "then put, &c. George Masterman, late of, &c. merchant, that he original in B. R.
 "be before our lord the king, on the morrow of All Souls, wherefo- on a bill of ex-
 "ever, &c. to shew, for that whereas heretofore, to wit, on the change, Third
 "eighteenth day of February, in the year of Our Lord 1781, that is Indorse v. Ac-
 "to say, at York, in the county of York, one J. E." according to ceptor; but as
 the custom of merchants in that respect used and approved of, made the bill was ac-
 and drew his certain (1) bill of exchange in writing, bearing date tually indorsed
 the same day and year aforesaid, upon the said defendant, by the after expiration
 name and description of, &c. and by the said (2) bill then and there of the time for
 required him the said defendant, six months after date, to pay to payment by the
 the order of (3) "one" G. B. (4) "in the said bill mentioned," payee, there is a
 by the name of Mr. G. B. one hundred and seventy pounds value second Count as
 received, as advised, and then and there delivered the said (5) bill indorsee of the
 to the said G. B. which said (6) bill of exchange the said defendant said payee.
 afterwards, to wit, on the, &c. aforesaid, at, &c. aforesaid, accepted, (1) other
 according to the said custom, "to pay the same at certain persons (2) last men-
 "using the style or firm of Parker and Co. by the style and descrip- tioned.
 "tion of Messrs. Parker and Co. No. 91, Watling Street, Lon- (3) the said
 "don;" and the said G. B. to whose order the payment of the (4) herein be-
 said sum of money, in the said (7) bill specified, was to be made, fore mentioned
 afterwards, and before the payment of the said sum of money in the (5) last men-
 said (8) "bill mentioned," or of any part thereof, to wit, on the tioned
 said, &c. aforesaid, at, &c. aforesaid, indorsed the said (9) bill (6) last men-
 according to the aforesaid custom, and by that indorsement appointed tioned
 the said sum of money, in the said (10) "bill mentioned," to be (7) last men-
 paid to "the order of one J. A. and then and there delivered the said tioned
 "bill so indorsed to the said J. A.; and the said J. A. to whose (8) last men-
 "order the payment of the said sum of money, in the said bill men- tioned bill speci-
 "tioned, was by that indorsement appointed to be made, after the fied
 "making of the said indorsement, and before the payment of the said (9) last men-
 "sum of money in the said bill mentioned, or of any part thereof, to tioned
 "wit, on, &c. at, &c. aforesaid, indorsed the said bill according to (10) last men-
 "the said custom, and by that indorsement appointed the contents tioned bill speci-
 "thereof to be paid to the order of one G. K. and then and there fied
 "delivered the said bill so indorsed to the said G. K.; and the said (11) last men-
 "G. K. to whose order the payment of the said sum of money, in the tioned
 "said bill mentioned, was by virtue of the said last-mentioned in- (12) last men-
 "dorsement to be made, after the making of the said last-mentioned tioned
 "indorsement, and before the payment of the said sum of money in the
 "said bill mentioned, or of any part thereof, to wit, on, &c. at, &c.
 "aforesaid, indorsed the said bill according to the said custom, and
 "by that indorsement appointed the contents thereof to be paid to"
 the said plaintiff, and then and there delivered the said (11) bill so
 indorsed to the said plaintiff; of which said "several" indorse-
 ments so made on the said (12) bill as aforesaid, the said defendant
 afterwards, to wit, on the said, &c. aforesaid, at, &c. aforesaid,

had

(13) last-men-
tioned.

(14) last men-
tioned

Indorsement.

had notice ; and thereby, and by reason of the several other pre-
mises aforesaid, and by force of the custom and by the law of
merchants, he the said defendant became liable to pay to the said
plaintiff the said sum of money in the said (13) bill specified, ac-
cording to the tenor and effect of the said (14) bill, and his aforesaid
acceptance thereof, and the said "*several*" indorsements so made
thereon as aforesaid ; and being so liable, &c. (Second Count,
That whereas afterwards, to wit, on, &c. at, &c. aforesaid, the
said J. E. same as first, inserting what is in the margin, and omit-
ting what is within inverted commas (*a*) and italic.)

N. B. The acceptance was in these
words : " Accepted, payable at Messrs.
" Parker and Co. 91, Watling street,
" London."

N. B. The acceptor refused to pay on
account of larger demands against payee
and drawer ; therefore the bill was re-
turned by the several indorsees to payee,

who again indorsed it to plaintiff after it
became due.

(a) If the student finds any difficulty
on account of abridging the precedents,
I advise him in all cases to transcribe the
Declaration and Plea, &c., and to complete
the Counts.

By FOURTH INDORSEE.

Count on an in-
land bill of ex-
change, *Fourth*
Indorsee v.
Fourth Indorsee,
where one of the
indorsements is
stated to be by
procuration.

H. Bl Rep.
C. B. Minet and
Fector v. Gib-
son and John-
son.

AND whereas the said James Hull heretofore, to wit, on the
second day of April A. D. 1791, to wit, at Liverpool aforesaid,
in the county aforesaid, according to the custom of merchants in
that particular, made and drew his certain bill of exchange in
writing, at Birmingham, bearing date the day and year last afore-
said, upon Messrs. Masterman, Peters, Walker, and Mildred, ban-
kers, London, and by the said bill then and there required them the
said Messrs. Masterman, Peters, Walker, and Mildred, sixty-five
days after the date thereof, to pay to the order of one S. L. by the
name and addition of Mr. Sand Luff, in the said bill mentioned,
eleven pounds eleven shillings value received, and then and there
delivered the said bill to the said S. L. ; and the said S. L. to whom
or to whose order the payment of the said sum of money in the said
bill specified was to be made, afterwards, and before the payment
of the said sum of money in the said bill mentioned, or of any part
thereof, to wit, on the day and year aforesaid, at Liverpool afore-
said, in the county aforesaid, *indorsed* the said bill, according to the
aforesaid custom, and by that indorsement appointed the said sum
of money, in the said bill mentioned, to be paid to one John Har-
greaves or order, and then and there delivered the said bill so in-
dorsed to the said John H. ; and the said J. H. to whom or to whose
order the payment of the said sum of money, in the said bill speci-
fied, was to be made, afterwards, and before the payment of the
said sum of money in the said bill mentioned, or any part thereof,
to wit, on the day and year last aforesaid, at Liverpool aforesaid,
in the county aforesaid, *indorsed* the said bill, according to the
aforesaid custom, and by that indorsement appointed the said sum
of money, in the said bill mentioned, to be paid to one George
Dukbar : and the said G. D. to whom or to whose order the said
sum of money, in the said bill mentioned, was, by the said last-
mentioned

First Indorse-
ment in full.

Second Indorse-
ment in blank.

mentioned indorsement, appointed to be paid as aforesaid, afterwards, and before the payment of the said sum of money in the said bill mentioned, or any part thereof, to wit, on the day and year last aforesaid, at L. aforesaid, in the county aforesaid, by one T. S. *by procuration* from the said G. D. and as his agent in that behalf, *indorsed* the said bill, according to the said custom, and by that indorsement appointed the contents of the said bill to be paid to the said William Corf (a) or order, and then and there delivered the said bill so indorsed to the said William Corf; and the said W. C. to whom or to whose order the said sum of money, in the said bill specified, was, by the last-mentioned indorsement, appointed to be paid as aforesaid, afterwards, and before the payment of the said sum of money, in the said bill contained, or of any part thereof, to wit, on the day and year last aforesaid, at L. aforesaid, in the county aforesaid, *indorsed* the said bill, and by that indorsement appointed the contents of the said bill to be paid to the said (b) Bernard, and then and there delivered the said bill so indorsed to the said B. ; and the said B. avers, that afterwards, at the expiration of the said time in the said bill mentioned, and thereby appointed for payment thereof, to wit, on the ninth day of June in the year aforesaid, at L. aforesaid, in the county aforesaid, the said bill, with the said several indorsements so made thereon as aforesaid, was duly shewn and *presented* at the said Messrs. M. P. W. and M. bankers in London, for acceptance and payment thereof, and due payment was then and there requested to be made of the said bill, according to the tenor and effect of the said bill, and of the said several indorsements so made thereon as aforesaid: but the said A. B. avers, that when the said bill was so shewn and presented at the said Messrs. M. &c. as aforesaid, for acceptance and payment of the same, the same was not either accepted or paid, but acceptance or payment thereof was then and there wholly refused, to wit, at L. aforesaid, in the county aforesaid; of all which premises the said W. C. afterwards, to wit, on the same day and year aforesaid last aforesaid, there had due notice: by reason of which said premises, and according to the custom, and by the law of merchants, the said W. C. then and there became liable to pay to the said B. the said sum of money contained in the said bill, when he the said W. C. should be thereto afterwards requested; and being so liable, he the said W. C. in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, at L. aforesaid, in the county aforesaid, undertook, and then and there faithfully promised the said B. to pay him the said last-mentioned sum of money in the said bill contained, when he the said W. C. should be thereto afterwards requested,

Third indorsement by procuration.

Fourth indorsement in blank.

Presentment for acceptance and payment.

Averment that drawee refused to accept or pay.

(a) Plaintiff.

(b) Defendant.

LONDON, *ff.* For that whereas at the said several times hereafter mentioned, the said R. and J. R. and also J. F. J. S. J. S. J. W. J. L. and D. L. were persons residing, trading, and where third Indorsees are partners, and one of them indorsed the bill for himself and

Declaration on an inland bill by Fourth Indorsee v. Second Indorser, using

ASSUMPSIT GENERAL.—ON BILLS OF EXCHANGE.

using commerce within this kingdom, that is to say, at London aforesaid, to wit, &c. ; and whereas also the said J. L. and D. L., were at those several times partners and joint dealers together in their trade and commerce, to wit, at, &c. ; and the said R. J. R. J. F. J. S. J. S. J. W. J. L., and D. L. being so resident and trading, and the said J. and D. being partners and joint dealers together as aforesaid, the said J. F. on the fifteenth day of September A. D. 1763, to wit, at, &c. according to the custom of merchants from time immemorial there used and approved of within this kingdom, made his certain bill of exchange in writing, subscribed with the hand-writing and name of the said J. F., and bearing date the same day and year aforesaid, and then and there directed the said bill to the said J. S. by the name of, &c. and by the said bill required the said J. S. two months after the date thereof, to pay to the said T. S. by the name of Mr. T. S. or order, forty-five pounds value received, without being further advised by the said J. F. and then and there delivered the said bill to the said T. S. ; *which said bill of exchange he the said J. S. afterwards, and before the payment of the said sum of money contained in the said bill, and before the time appointed by the said bill for payment thereof, to wit, on, &c. aforesaid, upon sight thereof accepted, according to the said custom ; and the said T. S. to whom or to whose order the payment of the said sum of money mentioned in the said bill was to be made as aforesaid, afterwards, and before the payment of the said sum of money contained in the said bill, or of any part thereof, and also (a) before the time appointed by the said bill for payment thereof, to wit, on the same day and year aforesaid, at, &c. aforesaid, indorsed the said bill, his own proper hand being thereto subscribed, and by that indorsement appointed the contents of the said bill to be paid to the said (J. R.) or order, and then and there delivered the said bill so indorsed to the said J. R. ; and the said J. R. to whom or to whose order the payment of the said sum of money, in the said bill mentioned, was by the said indorsement appointed to be made as aforesaid, after the making of the said indorsement, and before the payment of the said sum of money contained in the said bill, or of any part thereof, and also before the said time appointed by the said bill for payment thereof, to wit, on the same day and year aforesaid, at, &c. aforesaid, indorsed the said bill, his own proper hand being thereto subscribed, and, by the said last-mentioned indorsement, appointed the contents of the said bill to be paid to the said J. W. and then and there delivered the said bill so indorsed to the said J. W. ; and the said J. W. to whom or to whose order the payment of the said sum of money contained in the said bill was by the said last-mentioned indorsement to be made as aforesaid, after the making of the said last-mentioned indorsement, and before the payment of the said sum of money contained in the said bill, or any part thereof, and also before the time appointed by the said bill*

Drawer.

Acceptor.

Payee.

Acceptance.

First Indorsee,
second Indorser,
and Defendant.Second Indorse-
ment.

(a) A bill may be negotiated after the day of payment, Lord Ray. 575. ; therefore this had better be omitted.

for payment of the money therein mentioned, to wit, on the same day and year aforesaid, at, &c. aforesaid, indorsed the said bill, his own proper hand being thereto subscribed, and, by the said last-mentioned indorsement, appointed the contents of the said bill to be paid to the said J. L. and D. L. so being partners and joint dealers together as aforesaid, and then and there delivered the said bill so indorsed to the said J. L. and D. L. ; and the said J. L. and D. L. so being partners and joint dealers together in trade as aforesaid, and the payment of the said sum of money mentioned in the said bill being by the said last-mentioned indorsement to be made to them as aforesaid, and the said J. L. for himself and the said D. L. his said partner, after the said indorsement so made to them the said J. L. and D. L. as last aforesaid, and before the payment of the said sum of money contained in the said bill, or of any part thereof, *and also before the time appointed by the said bill for payment of the said sum of money therein mentioned*, to wit, on, &c. at, &c. aforesaid, indorsed the said bill, his own proper hand being thereto subscribed, according to the custom of merchants from time immemorial there used and approved of ; and by the said last-mentioned indorsement, the said J. L. for himself and the said D. L. his partner, appointed the contents of the said bill to be paid to the said (plaintiff) ; of which said several indorsements so made on the said bill as aforesaid, the said J. S. afterwards, to wit, on, &c. at, &c. had notice : *and the said plaintiff avers*, that the said bill afterwards, and at the end and expiration of the time appointed by the said bill for payment thereof, to wit, on the eighteenth day of November, in the year aforesaid, at, &c. aforesaid, was shewn and (1) presented to the said J. S. for payment of the money therein mentioned, and that the said J. S. was then and there requested by the said (plaintiff) to pay to him the said sum of money contained in the said bill, according to the tenor and effect of the said bill, and of his said acceptance, and of the said several indorsements so made thereon as aforesaid ; but that the said J. S. did not, when the said bill was so shewn and presented to him, or at any other time whatsoever, pay the money therein mentioned, or any part thereof, to him the said (plaintiff), but the payment thereof hath hitherto wholly refused and neglected ; of all which said premises the said defendant afterwards, and at the end and expiration of the said two months next after the date of the said bill, and thereby appointed for the payment thereof, to wit, on the said eighteenth day of November, in the year aforesaid, at, &c. aforesaid, had (2) notice ; and by reason of the premises, and according to the

Third Indorsee's
partners.

Notice of in-
dorsements to
acceptor.

Presentment to
acceptor.

Notice to de-
fendant.

(1) Bl. 1. Bull. Ni. Pri. 274. Ed. 1790.
Doug. 62. Fort. 376. Lord Raym. 743.
2. Bl. Com. 469. Mar. 2. Ed. 25.
Beawes, f. 260. 1. Ed. p. 449. and
f. 252. 1. Ed. 447. Marius, 2. Ed.
p. 19. Lord Raym. 1076. Mar. 2. Ed.
p. 25. Beawes, f. 251. 1. Ed. 447.
Mar. 2. Ed. 19. 22. 24. Beawes, f. 253.
1. Ed. p. 447. Lutw. 1591. Lord Raym.
281. 1. Barnard. E. R. 303. Str. 829.
Fort. 376.

(2) Burr. 267. 1. T. R. 712. 182.
169, 170. Lord Raym. 993. 6. Mod.
80. Salk. 131. 3. Salk. 69. Salomons
v. Staveley, B. R. M. 24. G. 3. Doug.
659. 2. T. R. 717. 3. & 4. Ann.
c. 9. f. 4. and f. 6. 9. & 10. Will. 3.
c. 17. f. 1. Ann. 77, 78. Str. 910.
1. T. R. 169. 168. Malynes, b. 3 c. 6.
f. 1. 1. Ed. p. 265. Mar. 2. Ed. p.
24. Dougl. 497. Str. 217.

ASSUMPSIT GENERAL.—ON BILLS OF EXCHANGE.

said custom, and by the law of merchants, he the said (defendant) became liable to pay to the said (plaintiff) said sum of money contained in the said bill, when he the said (defendant) should be thereto afterwards requested; and being so liable, &c. the said (defendant), in consideration, &c. undertook, &c. to pay, &c. when he should be thereto requested. (Money had and received; damages forty-five pounds; and common conclusion.)

BY FIFTH INDORSEE—STATING INDORSEMENT BY FOURTH INDORSEE AS BEFORE.

BY SIXTH INDORSEE.

Declaration on a bill of exchange drawn on a fictitious person not to be found.

Sixth Indorsee v. Third Indorser.

YORKSHIRE, to wit. John Morton complains of Thomas Dickinson, &c. for that whereas, before and at the several and respective times hereinafter mentioned, the said John Morton and Thomas Dickinson, one Joseph Graham, and one James Green, and one Thomas Hinchliffe, and one Charles France, and one John Cartwright, and one Richard Earnshaw, and certain persons commonly called and known by the names, and using the style and firm of Earnshaw and Royston, were persons residing, trading, and using commerce within this kingdom, to wit, at, &c.; and being so resident, trading, and using commerce as aforesaid, the said James Graham heretofore, to wit, on, &c. at, &c. according to the usage and custom of merchants from time immemorial used and approved of in this kingdom, made his certain bill of exchange, his own proper hand-writing being thereto subscribed, bearing date the same day and year aforesaid, and then and there directed the said bill of exchange to one John Purviator, by the name and addition of Mr. J. P. No. 1, Aldgate, London; by which said bill of exchange he the said J. G. then and there required the said J. P. to pay, two months after the date thereof, to the order of the said James Green, by the name and addition of Mr. James Green, six pounds, value in account, as advised by him the said Joseph Graham; and the said Joseph Graham then and there delivered the said bill of exchange to the said James Green; and the said James Green, to whole order the said sum of money, in the said bill of exchange specified, was, by the said bill of exchange, to be paid, after the making of the said bill of exchange, and before the payment of the said sum of money in the said bill of exchange specified, or of any part thereof, to wit, on, &c. at, &c. indorsed the said bill of exchange, according to the said usage and custom of merchants, and thereby then and there ordered and appointed the said sum of money, in the said bill of exchange specified, to be paid to the said Thomas Hinchliffe or his order, and then and there delivered the said bill of exchange, so indorsed as aforesaid, to the said T. H.; and the said T. H. to whom or to whole order, &c. &c. (T. H. indorsed it over to Charles France, C. F. then indorsed it over to T. D. the defendant; T. D. indorses it over to John Cartwright, and he indorses it to Richard Earnshaw, and he indorses it over to Earnshaw and Royston, who indorse it over to J. M. the plaintiff: then

The several indorsements set out.

then go on as follows:) And the said J. M. in fact saith, that afterwards, to wit, on, &c. and on divers other days and times between that day and the seventh day of October then next following, he the said J. M. did make diligent search and inquiry after the said John Purviator, at No. 1, Aldgate, London, being the place to which the said bill of exchange was so directed as aforesaid, and at divers (4) *other places, in order to shew and present* the said bill of exchange to him the said J. P. for his acceptance and payment thereof, according to the said usage and custom of merchants; but that, notwithstanding such search and inquiry, he the said J. M. (5) *could not at any, or either of these times or places,* find the said J. P. nor hath he the said J. P. at any time since the making of the said bill of exchange, hitherto accepted the same, or paid the money therein specified, or any part thereof, to the said J. M. but wholly neglected so to do; of all which said several premises the said T. D. afterwards, to wit, on the day and year last aforesaid, at Halifax aforesaid, in the county aforesaid, had notice: by means whereof, and according to the said usage and custom of merchants, he the said T. D. then and there became liable to pay to the said J. M. the said sum of money in the said bill of exchange specified, when he the said T. D. should be thereto afterwards requested; and being so liable, he the said T. D. in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at Halifax aforesaid, in the county aforesaid, undertook and faithfully promised the said J. M. to pay him the said sum of money in the said bill of exchange specified, when he the said T. D. should be thereto afterwards requested. (2d Count like the first, for another bill for six pounds eight shillings of a different date.)

Averment that drawee not to be found.

(4) Ld. Raym. 743. Str. 1087.

(5) Str. 1087.

ACCEPTORS AGAINST DRAWER.

THE method of declaring on a bill drawn by partners is thus— After stating the parties to be traders, &c. and the partnership, you say: And the said, &c. being so resident, and the said A. and B. being partners as aforesaid, the said A. for himself, and the said B. his said partner, on, &c. to wit, at, &c. made a certain bill of exchange in writing, subscribed with his own proper hand, &c. according, &c. &c.

Declaration against Drawers, partners.

MIDDLESEX ff. If George E. shall give you security to prosecute his suit, then put, by sureties and safe pledges, Robert D. late of Westminster in the county of Middlesex, haberdasher, Achilles S. late of the same place, haberdasher, and John P. late of the same place, haberdasher, to shew, that whereas heretofore, to wit, on the first of November A. D. 1787, at Westminster aforesaid, in consideration that the said George, at the special instance and request of the said Robert, Achilles, and John, and for their accommodation, had then and there accepted a certain bill of exchange, bearing date the day and year aforesaid, drawn with money, when the bill became due. Two Counts; one money laid out and account stated.

Declaration, K. B. in special assumpsit, by original, upon an accommodation bill of exchange, by Acceptors against the Drawers, partners, who had undertaken to provide acceptor expended; and

by

ASSUMPSIT GENERAL.—ON BILLS OF EXCHANGE.

by the said Robert, Achilles, and John, in their partnership style and firm of D. S. and Co. upon the said George, for the sum of ninety-three pounds of lawful money of Great Britain, payable to certain other persons then and there also carrying on trade in partnership, under the style and firm of Messrs. F. W. and Co. or to their order, at eight months after the date of the said bill, they the said Robert, Achilles, and John undertook, and then and there faithfully promised the said George, that they the said Robert, Achilles, and John would furnish money to him the said George for the payment of such bill, before or at the time when the same should become payable: Yet the said Robert, Achilles, and John, not regarding the said promises and undertakings, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said George in this respect, did not, nor would before, nor at the time when the said bill of exchange became payable, or at any time since, furnish money to the said George, but therein wholly have failed and made default; by reason whereof the said George was afterwards, and when the said bill became payable, to wit, on the fourth of July A. D. 1788, at Westminster aforesaid, forced and obliged to pay, and did actually pay, the said sum of money in the said bill specified, to the holders of the said bill. And whereas also the said Robert, Achilles, and John afterwards, to wit, on the twenty-fifth of April A. D. 1789, at, &c. aforesaid, were indebted to the said George in the further sum of, &c. (for money paid, laid out, and expended, and assumpsit thereon.) And whereas also, &c. (indebitatus assumpsit on account stated.) Yet the said Robert, Achilles, and John, not regarding their said two last mentioned promises and undertakings, but contriving, &c. &c. &c.

BY ACCEPTOR AGAINST DRAWER.

Acceptor against Drawer of a bill of exchange, for not taking it up when due, according to his promise, and in dismissing plaintiffs, the acceptors, whereby plaintiffs were forced to pay it, together with costs, on a judgment obtained against them thereon.

MIDDLESEX. Solomon Schomberg, late of, &c, was attached to answer Andrew Lacon and Edward Carter in a plea of trespass on the case; and thereupon the said plaintiffs by J. E. their attorney, complain, that whereas he the said defendant, on the ninth day of November A. D. 1756, at Westminster in the county of Middlesex, made a certain bill of exchange in writing, subscribed with his own proper hand, according to the custom of merchants from time immemorial used and approved of; and the said bill, bearing date the said day and year aforesaid, then and there directed to the said plaintiffs, by the name of, &c. and thereby required the said plaintiffs, at two months date, to pay to James Rous or order the sum of fifty pounds as for value of him the said James received, and to place it to account of the said defendant; and the said Edward Carter afterwards, to wit, on the said day and year aforesaid, at Westminster aforesaid, in the county aforesaid, for himself and the said Andrew, at the special instance and request of the said defendant, accepted the said bill; and in consideration of the said premises, he the said defendant undertook, and then and there faithfully promised the said plaintiffs, that the said

said defendant would pay the said bill when it became due and payable, and to hold them the said plaintiffs indemnified therefrom: and the said plaintiffs in fact say, that the said bill, on the twelfth day of November in the year aforesaid, at Westminster aforesaid, became due and payable; whereof the said defendant then and there had notice: Yet the said defendant, not regarding, &c. but contriving, &c. did not, when the said bill so became due and payable as aforesaid, or at any other time whatsoever, pay the same, or the said sum of money therein mentioned, or any part thereof, or in any manner whatsoever indemnify, or keep, or hold indemnified, the said plaintiffs of, from, or against the said bill, according to the said promise and undertaking of the said defendant, but therein wholly failed and made default; and thereupon the said plaintiffs, for their discharge of and from the said bill, and from a judgment at law thereupon recovered against them by the said James Rous, afterwards, to wit, on the eighth day of April 1757, at Westminster aforesaid, were forced and compelled to pay and satisfy, and did then and there pay and satisfy the said sum of fifty pounds to the said James Rous, and a large sum of money, to wit, the sum of fifteen pounds, for costs of suit, to wit, at Westminster aforesaid. (Money Counts.)

Breach, did not indemnify.

Drawn by MR. WARREN.

LANCASHIRE, ff. For that whereas, before the making of the promise and undertaking hereafter next mentioned, to wit, on the twentieth day of September A. D. 1780, at L. in the county of Lancaster, one Samuel Heewood, being a mariner in and on board a certain ship or vessel of the said plaintiff, according to the usage and custom of merchants, made his certain bill of exchange in writing, his own hand being thereunto subscribed, bearing date the same day and year aforesaid, and then and there directed the said bill of exchange to the said plaintiffs, and thereby requested the said plaintiffs, as soon as he the said Samuel had so much due to him, either by his wages or prize money, to pay to the said defendant, by the name and description of, &c. or order, the sum of eight pounds four shillings and sixpence, and place the same to his account; and then and there delivered the said bill of exchange to the said defendant; which said bill of exchange afterwards, to wit, on the same day and year aforesaid, at, &c. aforesaid, was shewn and presented to the said plaintiffs for payment thereof; and thereupon afterwards, to wit, on the same day, &c. aforesaid, at, &c. aforesaid, in consideration that the said plaintiffs, at the special instance and request of the said defendant, would then and there pay the said sum of money in the said bill contained to the said defendant, he the said defendant undertook, and to the said plaintiffs then and there faithfully promised, to refund the said sum of money to the said plaintiffs, in case any other bills prior to that bill should appear against the said Samuel: and the said plaintiffs in fact say, that they the said plaintiffs did then and there pay the said sum of money, in the said bill of exchange contained, to the said defendant

Drawer v. Payee of a bill of exchange, who had accepted and paid it on a special promise to refund if any prior bill appeared, which so happened.

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accordingly;

accordingly: and the said plaintiffs further say, that afterwards, to wit, on the same day and year aforesaid, at, &c. aforesaid, a certain other bill of exchange against the said Samuel, bearing date the twenty-fourth of August A. D. 1780, and drawn by the said Samuel upon the said plaintiffs, for payment of ten pounds three shillings and fourpence, by him to one George Wright, being a prior bill of exchange to the said bill of exchange of the said Samuel above mentioned to have been paid by the said plaintiffs to the said defendant, was *presented* to the said plaintiffs for acceptance and payment thereof; of which said premises the said defendant afterwards, to wit, on the said twentieth of September A. D. aforesaid, at, &c. aforesaid, *had notice*, and was then and there requested by the said plaintiffs, to *repay and to refund* to the said plaintiffs the said sum of money in the said first mentioned bill of exchange contained, according to the form and effect of his said promise and undertaking so made in that behalf as aforesaid: Yet the said defendant, not regarding, &c. but contriving, &c. hath not, although often afterwards requested, *repaid or refunded* the said sum of money in the said first mentioned bill of exchange contained, or any part thereof, to the said plaintiffs; but to *repay* or refund the same, or any part thereof, hath hitherto always refused, and still doth refuse. (2d, Money had and received, and conclusion to that Count.)

See Special Assumpsit, special to repay money.

V. GIBBS.

£11. 4s. 3d.

London, 31st October, 1786.

Gentlemen,

Three weeks after date pay to my order, eleven pounds four shillings and threepence, value on account with,

To Messrs. Creswell and
Lyons, Attornies at Law,
No. 24, Hilliard's Court,
Old Gravel-lane, Wapping. } Accts.

Gentlemen,

Your most obedient servant,
James Gardner.

for Thomas Creswell and self
Charles Lyons.

Declaration on the above, an inland bill of exchange, Draw-er against Accep-tors, bill payable to his order only, with averment, that he never in-dorsed it; and where one re-puted partner ac-cepted for him-self and the other.

LONDON, *ss.* James Gardner complains of Thomas Creswell and Charles Lyons, attornies of the court of our lord the now king, before the king himself, present here in court in their own proper persons, in a plea of trespass on the case, &c. for that whereas the said James Gardner heretofore, to wit, on the thirty-first day of October in the year of Our Lord 1786, at London aforesaid, in the parish of St. Mary le Bow, in the ward of Cheap, according to the custom of merchants, made and drew a certain bill of exchange in writings, bearing date the day and year aforesaid, upon the said Thomas and Charles, by the name and description of Messrs. Creswell and Lyons, attornies at law, No. 24, Hilliard's court, Old Gravel-lane, Wapping, and thereby required the said Thomas and Charles, three weeks after the date thereof, to pay to the order of him the said James eleven pounds four shillings

shillings and threepence, value on account with him the said John ; which said bill of exchange he the said Charles, for himself and the said Thomas in that behalf, afterwards, and before the time appointed for the payment of the money therein mentioned, to wit, on the day and year aforesaid, at London aforesaid, in the parish and ward aforesaid, *duly accepted*, according to the custom of merchants, for payment of the money therein mentioned, according to the tenor and effect of the said bill ; whereby, and by means of which said several premises, and according to the said custom and the law of merchants, they the said Thomas and Charles became liable to pay the said sum of money in the said bill of exchange mentioned, according to the tenor and effect of the said bill : *and the said James avers that he the said James did not, at any time before, nor at or after the time appointed by the said bill for payment of the money therein mentioned, indorse the same, or order the contents thereof to be paid to any person or persons whatsoever, to wit, at London aforesaid, in the parish and ward aforesaid ; whereof they the said Thomas and Charles afterwards, and whilst the said bill was unindorsed, to wit, on the twenty-third day of November in the said year 1786, there had notice : in consideration of which said several premises they the said Thomas and Charles afterwards, to wit, on the day and year last aforesaid, at London aforesaid, in the parish and ward aforesaid, undertook, and then and there faithfully promised the said James, to pay him the said sum of money in the said bill mentioned, when they the said Thomas and Charles should be thereunto afterwards requested. And whereas the said James heretofore, to wit, on the said thirty-first day of October in the said year 1786, at London aforesaid, in the parish and ward aforesaid, according to the custom of merchants, made and drew his certain other bill of exchange in writing, bearing date the day and year last aforesaid, upon the said Thomas and Charles, by the name and description of Messrs. Creswell and Lyons, attornies at law, No. 24, Hillard's court, Old Gravel lane, Wapping, and thereby required the said Thomas and Charles, three weeks after date, to pay to the order of him the said James eleven pounds four shillings and threepence, value on account with him the said James ; which said last mentioned bill of exchange, afterwards, and before the time thereby appointed for the payment of the money therein mentioned, to wit, on the day and year last aforesaid, at London aforesaid, in the parish and ward aforesaid, was *duly accepted* by and on behalf of the said Thomas and Charles, according to the said custom ; whereby, and by reason of which said several premises, and according to the custom and by the law of merchants, they the said Thomas and Charles became liable to pay the said sum of money in the said last mentioned bill specified, according to the tenor and effect of the said bill : and the said James avers that he the said James did not at any time before, or at or after the time appointed by the said bill for the payment of the money therein specified, indorse the said bill, or order the money there-*

Duly accepted
by one for both.

Never indorsed;

2d Count, stat-
ing the bill to
have been duly
accepted gene-
rally

in mentioned to be paid to any person or persons whatsoever, to wit, at London aforesaid, in the parish and ward aforesaid; whereof they the said Thomas and Charles afterwards, and after the time appointed by the said last-mentioned bill for payment of the money therein specified, and whilst the said last-mentioned bill was undorsed, to wit, on the said twenty-third day of November in the said year of Our Lord 1786, there had notice: in consideration of which said several premises, they the said Thomas and Charles afterwards, to wit, on the day and year last aforesaid, at London aforesaid, in the parish and ward aforesaid, undertook, and then and there faithfully promised the said James to pay him the said sum of money in the said last-mentioned bill specified, when they the said Thomas and Charles should be thereunto afterwards requested. (Add Counts for goods sold and delivered, money lent and advanced, laid out, expended, and paid, had and received, account stated, &c. common conclusion, with this addition, after stating a request:—" And although the said (plaintiff) hath not " at any time since the making the said promises and undertakings in the said first and second counts above mentioned, indorsed over or negotiated the said several bills of exchange, or " either of them, in those premises and undertakings mentioned, " or appointed the money therein or in either of them specified " to be paid to any person or persons whatsoever.") But, &c.

THOMAS BARROW.

Conclusion.

FOREIGN, BY DRAWER AGAINST ACCEPTOR.

Declaration on a bill of exchange drawn for a foreign sum of money, *Drawer v. Acceptor.*

LONDON, to wit. Bernardo Joze Pinto de Oleveyra against Antonio Joze Cæsar, &c.; for that whereas the said plaintiff, on the third day of August in the year of Our Lord 1782, at London aforesaid, to wit, in the parish of St. Mary le Bow, in the ward of Cheap, according to the usage and custom of merchants, made his certain bill of exchange in writing, with his own proper hand thereunto subscribed, bearing date the same day and year aforesaid, and then and there directed the said bill of exchange to the said defendant, by the name and description of Mr. Antonio Joze Cæsar D^l. G^l. D^l. Porto, and thereby required the said defendant, at fifty days of that date, to pay that third of exchange, the first and second of that of no vigor, to the order of Mr. Joze Ferr^a. Guim^la. the sum of 170=140 reis, value received of himself, and the said 170=140 reis, in the said bill of exchange mentioned, being Portugal money of the value of forty-eight pounds seven shillings and five-pence of lawful money of Great Britain; which said bill of exchange afterwards, to wit, on the same day and year aforesaid, at L. &c. aforesaid, according to the usage and custom of merchants, was shewn and presented to the said defendant for his acceptance; and the said defendant then and there, according to the usage and custom of merchants, accepted

accepted the same: and the said plaintiff in fact saith, that the said Joze Ferr^a. Guim^{is}. hath not yet made any order for the payment of the said sum of money in the said bill of exchange contained. And the said plaintiff in fact further saith, that afterwards, to wit, on the twenty-fifth day of September in the year aforesaid, at Porto in the said bill mentioned, to wit, at London, &c. aforesaid, according to the usage and custom of merchants, the said bill of exchange was shewn and presented to the said Antonio Joze Cæsar for payment thereof, and the said defendant was then and there requested to pay the said sum of money in the said bill of exchange contained; but the said defendant then and there wholly refused to pay the said sum of money in the said bill of exchange mentioned; by reason whereof, the said plaintiff afterwards, to wit, on the same day and year last aforesaid, at L. &c. aforesaid, was forced and obliged to pay, and has paid to the said Joze Ferr^a Guim^{is}. the said sum of money in the said bill of exchange contained; of all which said premises the said defendant afterwards, to wit, on the day and year last aforesaid, at London, &c. aforesaid, had notice; by reason whereof, and by force of the usage and custom of merchants, the said defendant became liable to pay to the said plaintiff the said sum of money in the said bill of exchange contained, when he the said defendant should be thereunto afterwards requested; and being so liable, he the said defendant, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, at London, &c. aforesaid, undertook, and to the said plaintiff then and there faithfully promised to pay to him the said sum of money in the said bill of exchange contained, when he the said defendant should be thereunto afterwards requested. (2d Count for a foreign sum of a different date in a different set of Bills.)

W. BALDWIN,

These bills should have been protested.

LONDON, to wit. If Sir Patrick Crawford knight, George Crawford, James Crawford, and George Gibson, have made you secure, then put, by sureties and safe pledges, John Gilmour late of London merchant, that he be before our lord the king, on, &c. bill of exchange, wheresoever our said lord the king shall then be in England, to shew; for that whereas, at the several times hereafter mentioned, the said plaintiffs and the said defendant, and one G. M. and one W. C. and T. C. his son, and certain persons using trade and commerce by and in the name, firm, and style of Messrs. Thomas Coutts and Co. were persons residing, trading, and using commerce, to wit, the said plaintiffs and G. M. at Rotterdam in Holland, and the said defendant and the said W. C. and T. C. his son, and the said persons so using trade and commerce in the said name, style, and firm of Messrs. Coutts and Co. within this kingdom of England, to wit, at, &c. in, &c.; and the said plaintiffs were at those several times partners and joint dealers in their said trade thereby put to expence, such as commission, protest, &c. &c. The agents take it up for the honour of the drawer.

Præcipe for declaration by special original on a bill of exchange, Drawers, partners, against Acceptors, partners, after its having been twice indorsed, and when due shewn to defendant for payment, who then refused, whereby plaintiffs were obliged by their agents to take it up, and were

(1) Lord Raym.
375. 1484.
Doug. 630.

and commerce, and the said W. C. and his said son were also at those several times partners and joint dealers in their said trade and commerce, and the said persons so using trade in the name, style, and firm of Messrs. Coutts and Co. were also at those several times partners and joint dealers in the said trade and commerce; and being so respectively residing, trading, and using commerce as aforesaid, and the said plaintiffs being such partners and joint dealers as aforesaid, they the said plaintiffs, on, &c. in parts beyond the seas, to wit, at Rotterdam aforesaid, made their certain bill of exchange in writing, the hand-writing of (1) *one of them, for and on their joint and (1) partnership account*, and in their joint and partnership name, style, and firm, to wit, Crawford and Co. being thereunto subscribed, according to the custom of merchants time out of mind used and approved of; and the said bill bearing date the day and year aforesaid, then and there directed to the said J. G. by the name of, &c. and thereby required him the said J. G. at *two usance*, to pay that their first of exchange to the said G. M. or order, by the name of Mr. G. M. or order, one hundred and eighty-four pounds sterling value on account with R. C. and Co. and to place the same to account as per advice; and the said plaintiffs then and there delivered the said bill to the said G. M. and the said *two usance* mentioned in the said bill, at the time (a) of the making of the said bill, were, and from thence hitherto have been, and still are, *two calendar months from the day of the date of the bill*, and not any other time whatsoever, according to the said custom; and which said bill the said J. G. afterwards, to wit, on, &c. at, &c. accepted, according to the said custom; and the said G. M. to whom, or to whose order, the payment of the said sum of money mentioned in the said bill was to be made, afterwards, and before the payment thereof, or of any part thereof, and also before the time appointed by the said bill for payment thereof, to wit, on, &c. at, &c. *indorsed* the said bill, his own proper hand being thereunto subscribed, according to the said custom, and by that indorsement appointed the contents of the said bill to be paid to the said W. C. and Son, or order, and then and there delivered the said bill, so indorsed, to the said W. C. and Son; and the said W. C. and Son afterwards, and before the payment of the said sum of money, or of any part thereof, to wit, on, &c. at, &c. indorsed the said bill, the hand-writing of one of them, for and on their joint and partnership account, in their joint and partnership name, style, and firm, to wit, W. C. and Son, being thereunto subscribed, according to the said custom; and thereby appointed the contents of the said bill to be paid to the said Thomas Coutts and Co. and then and there delivered the said bill, so indorsed, to the said T. C. and Co.; and the said plaintiffs in fact say, that the said T. C. and Co. afterwards, to wit, on, &c. at, &c. caused the said bill, so accepted and indorsed as aforesaid, to be shewn and presented to the said J. G. for payment thereof, and thereby then and there required the said

1st Indorsement.

2d Indorsement.

(a) In declaring on a bill payable at usance, the time must be averred. 1. Salk. 731. 3. Keb. 645.

J. G.

J. G. to pay them the sum of money therein mentioned, according to the tenor and effect of the said bill, and of his said acceptance thereof, and of the said indorsements so made thereon as aforesaid; but the said J. G. at the said time when the said bill was so presented to him for payment thereof as aforesaid, or at any other time whatsoever, *did not pay* to the said T. C. and Co. the said sum of money mentioned in the said bill, but then and there wholly refused so to do, and therein wholly failed and made default; whereupon the said T. C. and Co. afterwards, to wit, on, &c. at, &c. duly caused the said bill to be *protested* for the said non-payment thereof, according to the said custom: and afterwards, to wit, on, &c. at, &c. according to the said custom, certain persons residing, trading, and using commerce within this kingdom, to wit, at, &c. by and in the name of Messrs. B. B. and Co. appeared before J. B. then being a notary public duly and by lawful authority admitted and sworn, dwelling in London, and being the same notary public by whom the said bill of exchange had been so protested, and according to the said custom, then and there declared before the said notary, that they would pay the said bill under the said protest, for *honour, and on account of the said plaintiffs the drawers* of the said bill, holding them the said drawers, and the acceptor, their executors and administrators, and all others whom it might concern, always obliged unto them the said Messrs. B. B. and Co. for their reimbursement; and thereupon the said Messrs. B. B. and Co. then and there, according to their said declaration and the said custom, paid the said bill under the said protest as aforesaid, together with five shillings and threepence for the (2) charges of the said protest, and afterwards, to wit, on, &c. at, &c. returned the said bill, so protested, to the said plaintiffs; and the said plaintiffs were then and there obliged to pay, and did pay, to the said Messrs. B. B. and Co. for the said bill, and for the (2) exchange and re-exchange of the money therein contained, and the (2) charge of protest, (2) commission, and other charges attending the said non-payment of the said bill, a large sum of money, to wit, the sum of two hundred pounds according to the said custom; of all which premises the said J. G. afterwards, to wit, on, &c. at, &c. had notice: and by reason of the premises, and by force of the said custom, and by the law of merchants, the said J. G. became liable to pay to the said plaintiffs the said sum of money so by them paid to the said Messrs. B. B. and Co. as aforesaid, to wit, the said sum of two hundred pounds, to wit, at, &c. in, &c.; and being so liable, he the said J. G. in consideration thereof, afterwards, to wit, on, &c. at, &c. undertook, and then and there faithfully promised the said plaintiffs, to pay them the said sum of money so by them paid, when he should be thereto afterwards requested. And whereas, &c. (another Count on the bill like the first, omitting the payment by B. B. and Co. for the honour of drawer B. B. and Co.; and immediately after stating the protest by Coutts and Co. saying: And thereupon the said T. C. afterwards, to wit, on, &c. at, &c. caused to be returned the said bill, so protested, for non-payment thereof, to

Non-payment.

Protest.

Paid by certain persons for the honour of drawers. 1. Will. 185. 4 Bro. Parl. Ca. 604. 10. Mod. 36.

(2) Bomb. 119. Bl. 760, 761. 6. Mod. 138. Pl. Aff. 28. and 2. T. R. 52. 1. Will. 185. 4. Bro. Parl. Ca. 607.

ad Count.

the said plaintiffs; and the said plaintiffs were then and there, and thereby, and according to the said custom, forced and obliged to pay to the said T. C. and Co. for the said bill, and for the exchange and re-exchange of the money therein contained, and the charge of the protest, commission, and other charges attending the said non-payment and return of the said bill, a large sum of money, to wit, the sum of two hundred pounds, according to the said custom; of all which premises the said J. G. afterwards, to wit, on, &c. at, &c. had notice: and by reason, &c. &c. as in the first Count to the end. (Add the common Counts, and breach.)

BY PAYEE AGAINST ACCEPTOR, &c.

Declaration on a
foreign bill of ex-
change, Payee v.
Acceptor, payable
at two usance.

LONDON, ff. J. S. and T. B. against A. R. for that whereas, at the several times hereafter mentioned, the said J. S. and T. B. and A. R. were persons residing, trading, and using commerce within this kingdom of England. to wit, at L. aforesaid, in the parish of St. Mary le Bow, in the ward of Cheap, and one W. B. was a person residing, trading, and using commerce in parts beyond the seas, to wit, at Hamburgh; and being so resident and trading respectively as aforesaid, the said W. on the eighteenth day of November A. D. 1749 New Style, at H. aforesaid, to wit, at London aforesaid, in, &c. aforesaid, made his certain bill of exchange in writing, subscribed with his own proper hand, according to the custom of merchants used and approved of from time immemorial, and the said bill, bearing date the same day and year aforesaid, then and there directed to the said A. by the name of Mr. A. R. merchant, London, and by the said bill required the said A. at (1) two usance to pay that his first per (2) exchange to the said J. and T. by the name of Messrs. Sterling and Banks, or order, one hundred and fifty pounds sterling value on account, as by advice from the said W.; and then and there delivered the said bill to the said J. and T.; which said bill of exchange the said A. afterwards, to wit, on the tenth day of November in the year aforesaid O. S. (or British style), at L. aforesaid, in parish and ward aforesaid, upon sight thereof, accepted, according to the said custom; by reason whereof, and by force of the said custom, and by the law of merchants, the said A. became liable to pay to the said J. and T. the sum of one hundred and fifty pounds specified in the said bill, according to the tenor and effect of the said bill and his said acceptance thereof; and being so liable, &c. (Assumpsit accordingly; Counts for money had and received, and common conclusion); and therefore he brings his suit, &c. (Then go on thus) With this, that (a) the said J. and T. will verify, that two usance mentioned in any bill of exchange drawn or made at H. aforesaid, are, and at the said several times aforesaid were, two months from the date of such bill, and no other time whatsoever. (Add pledges, if in B. R.)

- (1) Mar. 2d. Ed.
p. 23.
(2) Molloy, b.
11. c. 10. f. 24.
Malynes, b. 3.
c. 5. p. 261,
262. Marius, p.
7.

(a) It should be averred in the declaration what usance is, or it may be taken advantage of on demurrer. Viner's Abr.

tit. Bill of Exchange, O 4. 4. V. 256.
3. Keb. 645. Salk. 131. Mar. 2d. Ed.
p. 23.

MIDDLESEX,

MIDDLESEX, to wit. Henry Gurney esquire complains of Jacob Schalch esquire, being, &c. for that whereas, at the several times hereafter next mentioned, the said plaintiff and defendant, and one Richard Cox and Arthur Mair, were persons severally residing, trading, and using commerce, to wit, the said plaintiff Richard Cox and Arthur Mair, within this kingdom of England, to wit, at Westminster, in the county of Middlesex aforesaid, and the said defendant in parts beyond the seas, to wit, at Philadelphia in North America; and being so respectively residing, trading, and using commerce as aforesaid, he the said defendant, according to the usage and custom of merchants from time immemorial used and approved of, on the seventeenth day of July A. D. 1776, at Philadelphia in North America, to wit, at Westminster, &c. made his certain bill of exchange in writing, his own proper hand being thereto subscribed, bearing date the same day and year aforesaid, and then and there directed the said bill to the said R. C. and A. M. by the names and descriptions of Messrs. Cox and Mair, paymasters to the royal artillery, Craig's Court, Charing-cross, London, and thereby required them, at thirty days sight of that his first of exchange, second and third of the same tenor and date unpaid, to pay to the order of the said plaintiff H. G. forty pounds sterling on account of his (1) subsistence, as per advice from him the said defendant; which said bill of exchange afterwards, to wit, on the third day of December A. D. 1776, at Westminster aforesaid, in the county of Middlesex aforesaid, was shewn and presented by the said plaintiff to the said R. C. and A. M. for acceptance thereof; and the said R. C. and A. M. were then and there required by the said plaintiff to accept the said bill according to the said usage and custom; but the said R. C. and A. M. wholly refused to accept the same; whereupon he the said plaintiff then and there caused the said bill to be duly protested for non-acceptance thereof; and the said plaintiff further in fact says, that he made no order for the payment of the said sum of money in the said bill specified to any person whomsoever, whereby the same became payable to himself the said plaintiff; and that he the said plaintiff afterwards, to wit, on the fourth day of January 1777, at Westminster, &c. shewed and presented the said bill to the said R. C. and A. M. for payment thereof, and then and there required them to pay him the said plaintiff the said sum of money in the said bill mentioned, according to the tenor and effect of the said bill; but the said R. C. and A. M. then and there wholly refused to pay the said sum of money in the said bill mentioned, or any part thereof, to him the said plaintiff; whereupon he the said plaintiff then and there caused the said bill of exchange to be duly protested for non-payment thereof, according to the usage and custom aforesaid; of all which premises he the said defendant afterwards, to wit, on the day and year last aforesaid, at Westminster, &c. had notice: and by reason thereof, and according to the said usage and custom, and by the

Declaration on a bill of exchange drawn by an officer in foreign parts on his agents, who refused to accept, *Payee v. Drawer.*

(1) *Ld. Raym.*
1481. *Str.* 762.
1. *Barn.* 12.
Str. 24. 1. *Will.*
262.

the law of merchants, he the said defendant then and there became liable to pay to the said plaintiff the said sum of money, mentioned in the said bill, upon request; and being so liable, he the said defendant, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at Westminster, &c. undertook, and then and there faithfully promised the said plaintiff to pay him the said sum of money mentioned in the said bill when he the said defendant should be thereto afterwards requested. And whereas also the said defendant afterwards, to wit, on the first day of January A. D. 1785, at Westminster, &c. was indebted, &c. (Common Counts on Indebitatus Assumpsit for money lent and advanced, laid out and expended, had and received, and on an account stated, and common conclusion, to "and therefore he brings "suit, &c." after which the following words are to be added:

Averment that With this, that the said plaintiff will verify that the said second
all of the set are and third bills of exchange, in the aforesaid first bill of exchange
unpaid. mentioned, are, and each of them is, still wholly unpaid, to wit,
 at Westminster aforesaid, in the said county of Middlesex.)
 Pledges, &c,

Declaration in a
bill of exchange
by the Payee v.
the Drawer.
ad Count, say-
ing a banker's
draft instead of
a bill of ex-
change,

FOR that whereas the said William, on the twenty-fourth day of, &c. at, &c. in, &c. made his certain bill of exchange in writing, his own proper hand being thereto subscribed, bearing date the same day and year aforesaid, and then and there directed the said bill of exchange to certain persons commonly called and known by the names, and using the style and firm of Messrs. Down Thornton and Free, (by their names, style, and firm aforesaid); by which said bill of exchange he the said William then and there required the said Messrs. D. T. and F. to pay to the said Samuel (by the name and addition of Mr. Samuel Nisbett) or bearer, two hundred and eighty-two pounds, and then and there delivered the said bill of exchange to the said Samuel: and the said Samuel avers, that after the making of the said bill of exchange, and before the payment of the said sum of money therein specified, or of any part thereof, to wit, on, &c. at, &c. he the said Samuel did shew and present the said bill of exchange to the said Messrs. D. T. and F. for payment thereof, and did then and there request the said Messrs. D. T. and F. to pay the said sum of money therein specified according to the tenor and effect thereof; but that the said Messrs. D. T. and F. did not nor would at the said time when the said bill of exchange was so shewn and presented to them for payment thereof as aforesaid, pay the said sum of money therein specified, or any part thereof, but wholly refused and neglected so to do; whereof the said William afterwards, to wit, on, &c. at, &c. had notice: by means whereof, and according to the usage and custom of merchants, he the said William then and there became liable to pay to the said Samuel the said sum of money in the said bill of exchange specified, when he the said William should be thereto afterwards requested;

quested; and being so liable, he the said William in consideration thereof, afterwards, to wit, on, &c. at, &c. undertook and then and there faithfully promised the said Samuel to pay him the said sum of money in the said bill of exchange specified, when he the said William should be thereto afterwards requested. And whereas ^{2d Count.} the said William, on, &c. at, &c. according to the said usage and custom of merchants, made his certain draft or order in writing for the payment of money, commonly called a banker's draft, his own proper hand being thereto subscribed, bearing date the same day and year aforesaid, and then and there directed the said draft or order to the said Messrs. D. T. and F. by which said draft or order he the said William then and there required the said Messrs. D. T. and F. to pay to the said Samuel (by the name and addition of Mr. Samuel Nisbett) or bearer, two hundred and eighty-two pounds ten shillings, and then and there delivered the said draft or order to the said Samuel; and the said Samuel avers, that he the said Samuel did after the making of the said draft or order, and before the payment of the said sum of money therein specified, or of any part thereof, to wit, on the same day and year aforesaid, at London aforesaid, in the parish and ward aforesaid, shew and present the said draft or order for payment thereof to the said Messrs. D. T. and F. and then and there required the said Messrs. D. T. and F. to pay to him the said Samuel the said sum of money therein specified, according to the tenor and effect thereof; but that the said Messrs. D. T. and F. did not, nor would at the said time when the said draft or order was so shewn and presented to them for payment thereof as aforesaid, pay the said sum of money therein specified, or any part thereof, to him the said Samuel, but wholly neglected and refused so to do; whereof the said William afterwards, to wit, on, &c. at, &c. had notice: and by means thereof, and according to the said usage and custom of merchants, he the said William then and there became liable to pay to the said Samuel the said sum of money in the said draft or order specified, when he the said William should be thereto afterwards requested; and being so liable, he the said William in consideration thereof afterwards, to wit, on, &c. at, &c. undertook, &c. to pay him the said sum of money in the said draft or order when he the said William should be thereto afterwards requested. And whereas, &c. a third Count like the second, only instead of saying "draft or order," say, "note or instrument."—Add the money Counts, &c.)

AND whereas certain persons using trade and commerce, under the name, style, and firm of Peter Hafenclever and Company, in parts beyond the seas, to wit, at New York aforesaid, in the lifetime of the said Isaac Sears, to wit, on the said twenty-first day of January in the said year of Our Lord 1768, at New York aforesaid, (drawn by one of them for himself and the rest in firm), on Richard Willis, another of them, and authorized to accept for the firm, after acceptance; Willis and several other partners being since dead,

Another Count
by *Administratrix*
payee against
Acceptors, who
were partners,
against drawers
copartnership

York

York aforesaid, to wit, at London aforesaid, in the parish and ward aforesaid, according to the said usage and custom of merchants, made their certain bill of exchange, subscribed with the proper hand-writing of one of them for himself and the rest of them, in their joint and copartnership name, style, and firm of Peter Hasenclever and Company, bearing date the day and year last aforesaid, and then and there directed the said last-mentioned bill of exchange to the said Richard Willis in his lifetime, by the name and description of Richard Willis esquire, London, he the said R. W. then and there being employed as agent, and being duly authorized by the said George Jackson, John Elwin, Hutchinson Mure, Robert Mure, William Robertson, *Peter Hasenclever*, and the said Arthur Forrest, Thomas Dampier, Patrick Crawford, Richard Atkinson, John Devall, Neal Ward, Mary Bleach, Lucy Bleach, Charles Crofts, Andrew Seton and Miles Nightingale deceased in the life of the said A. F. J. D. P. C. R. A. J. D. N. W. M. S. L. S. C. C. A. S. and M. N. to accept for and on the behalf of them and himself the said Richard Willis bills of exchange drawn by the said persons so using trade and commerce as aforesaid, for and on the account of the said G. J. J. E. H. M. R. M. W. R. P. F. A. F. R. W. J. D. P. C. R. A. J. D. N. W. M. S. L. S. C. C. A. S. and M. N. and directed to him the said R. W. ; and by the said last-mentioned bill of exchange the said persons so using trade and commerce as aforesaid, required the said Richard Willis in his lifetime, at forty days sight, to pay that third of exchange (first and second not paid) to the order of the said Isaac Sears, by the name and description of Mr. J. S. four hundred pounds sterling value of the same, which they thereby required the said Richard Willis to place to the account of *A. C.* (meaning thereby the account of the said G. J. J. E. H. M. R. M. W. R. P. F. A. F. R. W. T. D. P. C. R. A. J. D. N. W. M. S. L. S. C. C. A. S. and M. N.) as per advice, and then and there directed the said last-mentioned bill of exchange to the said Isaac Sears in his lifetime. *And the said Emanuel Elam*, administrator as aforesaid, in fact saith, that the said last-mentioned bill of exchange afterwards, and in the lifetime of the said Isaac Sears, to wit, on the eleventh day of October in the said year of Our Lord 1768, was shewn and presented to the said Richard Willis in his lifetime, for his acceptance thereof; and the said Richard Willis then and there had sight of the said last-mentioned bill of exchange, and being so authorized as aforesaid, then and there, according to the said usage and custom of merchants, accepted the same for and on the behalf of *himself* the said R. W. and the said G. J. J. E. H. M. R. M. W. R. P. H. A. F. T. D. P. C. R. A. J. D. N. W. M. S. L. S. C. C. A. S. and M. N. in the lifetime of the said A. F. R. W. T. D. P. C. R. A. J. D. N. W. M. S. L. S. C. C. A. S. and M. N.: *by reason of all which premises*, according to the said usage and custom of merchants, the said

G. J.

G. J. J. E. H. M. R. M. W. R. P. H. and the said A. F. R. W. T. D. P. C. R. A. J. D. N. W. M. S. L. S. C. C. A. S. and M. N. deceased, in the lifetime of the said A. F. R. W. T. D. P. C. R. A. J. D. N. W. M. S. L. S. C. C. A. S. and M. N. *became liable* to pay to the said Isaac Sears the said sum of money contained in the said last-mentioned bill of exchange, according to the tenor and effect of the said last-mentioned bill, and of the said acceptance thereof as aforesaid; *and being so liable*, they the said G. J. J. E. H. M. R. M. W. R. P. H. and the said A. F. R. W. J. D. P. C. R. A. J. D. N. W. M. S. L. S. C. C. A. S. and M. N. deceased, in consideration thereof afterwards, and in the lifetime of the said A. F. R. W. T. D. P. C. Richard A. J. D. N. W. M. S. L. S. C. C. A. S. and M. N. to wit, on the twenty-third day of November in the said year of Our Lord 1768, at London aforesaid, in the parish and ward aforesaid, undertook, and to the said Isaac Sears in his lifetime then and there faithfully promised, to pay him the said sum of money in the said last-mentioned bill of exchange contained, according to the tenor and effect of the said last-mentioned bill of exchange, and of the said acceptance thereof as aforesaid: and the said Emanuel Elam avers that the said first and second in the said last-mentioned bill of exchange mentioned, are not yet paid. [Common money Counts; conclusion; and alledge the granting administration.]

MIDDLESEX, to wit. If Robert Scott make you secure, &c. then put, by gages and safe pledges, Samuel Thomas Roscow, late of Westminster in the county of Middlesex, gentleman, that he be before our lord the king in fifteen days from the day of Easter, wheresoever our said lord the king shall then be in England, to shew; for that whereas the said Samuel Thomas Roscow, on the twelfth day of December in the year of Our Lord 1782, in and on board of a certain ship or vessel called the Worcester, in certain parts beyond the seas, to wit, at or near Bombay in the East Indies, that is to say, at Westminster in the county of Middlesex aforesaid, according to the usage and custom of merchants from time immemorial used and approved of within this kingdom, made his certain bill of exchange in writing, his own proper hand being thereto subscribed, bearing date the same day and year aforesaid, and then and there directed the said bill of exchange to one Thomas Curry, by the name and addition of Thomas Curry esquire, Cold Harbour, Gosport; by which said bill of exchange he the said Samuel Thomas Roscow then and there required the said Thomas Curry to pay in London thirty days after sight of that his second bill (his first and third of the same tenor and date not paid) unto the said Robert, by the name and addition of Mr. Robert Scott, or his order, fifty pounds sterling, being for value received of him there, and to place the same to account, with or without

Payee v. Drawer
of a foreign bill
of exchange after
presentment
and protest for
nonacceptance.
Original in B.R.

without further advice of him the said Samuel Thomas Roscow; and the said Samuel Thomas Roscow then and there delivered the said bill of exchange to the said Robert: and the said Robert in fact says, that afterwards, to wit, on the sixteenth day of October in the year of Our Lord 1783, to wit, at Westminster in the county of Middlesex aforesaid, the said bill of exchange was shewn and presented to the said Thomas Curry for his acceptance thereof, and the said Thomas Curry then and there had sight of the said bill of exchange, and was then and there requested to accept the same according to the said usage and custom of merchants; but that the said Thomas Curry then and there wholly refused and neglected so to do; and thereupon the said bill of exchange was afterwards, to wit, on the day and year last aforesaid, at Westminster in the county of Middlesex aforesaid, duly protested for non-acceptance thereof, according to the said usage and custom of merchants; of all which said several premises the said Samuel Thomas Roscow afterwards, to wit, on the day and year last aforesaid, at Westminster in the county of Middlesex aforesaid, had notice: by means whereof, and according to the said usage and custom of merchants, he the said Samuel Thomas Roscow then and there became liable to pay to the said Robert the said sum of money in the said bill of exchange specified, when he the said Samuel Thomas Roscow should be thereunto afterwards requested; and being so liable, &c. &c. Assumpsit accordingly.

Drawn by MR. TIDD.

By FIRST INDORSEE AGAINST FIRST INDORSOR, &c.

First Indorsee v. First Indorser (a) FOR that whereas one G. C. on, &c. at, &c. according to the custom and usage of merchants, made his certain bill of exchange, of a foreign bill of exchange for payment of star pagodas, after the same had been refused acceptance or payment, and therefore returned by fourth Indorsee, protested for non-acceptance and non-payment, to plaintiff, who was obliged to take it up and pay it with re-exchange, interest, &c. (a) FOR that whereas one G. C. on, &c. at, &c. according to the custom and usage of merchants, made his certain bill of exchange, with his own proper hand-writing thereunto subscribed, bearing date the same day and year aforesaid, and then and there directed the said bill of exchange to one G. M. by the name and description of, &c. Madras, and thereby required the said G. M. at sixty days after sight, to pay that third bill of exchange (first and second not paid) to the order of the said D. T. by the name, &c. of D. T. esquire, two thousand eight hundred star pagodas, value of the same, which the said G. M. should place to account, with or without advice, and then and there delivered the said bill of exchange to the said D. T.: and the said plaintiffs aver, that at the time of the making of the said bill of exchange, the two thousand eight hundred pagodas therein mentioned were of the value of a certain sum of lawful money of Great Britain, to wit, the sum of one thousand five hundred pounds of lawful, &c. to wit, at, &c. aforesaid: and the said plaintiffs further say, that the said D. T. to whose order the payment of the said sum of money,

2. T. R. 52.

(a) Vide *casus* post.

(a) Vide this case reported in Durnford's and East's Reports, Trinity Term, 27. Geo. III.

in the said bill of exchange mentioned, was appointed to be made, afterwards, and before the payment thereof, to wit, on, &c. at, &c. according to the usage and custom of merchants, indorsed the said bill of exchange in writing, his own proper hand being thereto subscribed, and by that indorsement appointed the contents of the said bill to be paid to the said plaintiffs, x by the description of, &c. or order, value received, and then and there delivered the said bill, so indorsed, to the said plaintiffs; and they the said plaintiffs, to whom, or to whose order, the payment of the said sum of money in the said bill of exchange was by that indorsement appointed to be made, afterwards, and before the payment thereof, to wit, on, &c. at, &c. according to the usage and custom of merchants, *indorsed* the said bill of exchange in writing, the proper hand-writing of one of them for himself and the other of them being thereto subscribed, and by that indorsement appointed the contents of the said bill of exchange to be paid to certain persons carrying on trade and commerce under the name, style, and firm of A. M. and Co. or order, value on account with J. B. C. and R. C. and then and there delivered the said bill of exchange, so indorsed, to said A. M. and Co.: and the said plaintiffs further say, that the said A. M. and Co. to whom, or to whose order, the payment of the said sum of money in the said bill mentioned was by the said last-mentioned indorsement appointed to be made, afterwards, and before the payment thereof, to wit, on, &c. at P. in parts beyond the seas, that is to say, at, &c. according to the usage and custom of merchants, *indorsed* the said bill of exchange in writing, by the signature of A. M. and Co. and by that indorsement appointed the said sum of money in the said bill of exchange mentioned, to be paid to certain other persons carrying on trade and commerce under the name, &c. of P. D. and Company, or order, value on account, and then and there delivered the said bill of exchange, so indorsed as aforesaid, to the said P. D. &c. to whom, or to whose order, the payment of the said sum of money in the said bill of exchange mentioned was by the said last-mentioned indorsement appointed to be made: and the said plaintiffs further say, that the said P. D. &c. afterwards, to wit, in, &c. at Fort St. George, in parts beyond the seas, that is to say, at, &c. caused the said bill of exchange, so indorsed as aforesaid, to be *presented* and shewn to the said G. M. for his acceptance thereof, according to the said usage and custom of merchants, and the said G. M. had then and there sight of the said bill, and was then and there required to accept the said bill of exchange, the first and second in the said bill of exchange mentioned being then and there wholly unpaid; but he the said G. M. then and there wholly neglected and refused so to do; and thereupon the said bill of exchange afterwards, to wit, on, &c. last aforesaid, at Fort St. George aforesaid, that is to say, at, &c. aforesaid, was in due form of law *protested for the non-acceptance* thereof, according to the usage and custom of merchants; of which said premises said defendant, on, &c. at, &c. had notice: and the said plaintiffs further say, that the said

1st Indorsement,

2d Indorsement,

3d Indorsement,

Bill presented for acceptance.

Protested for non-acceptance.

Presented it for
payment, after it
became due.

Refusal of pay-
ment.

Protested for
non-payment.

Plaintiffs, as in-
dorseees, paycon-
tents of the bill.

Notice to defen-
dant.

said P. D. &c. afterwards, and when the said bill of exchange became due and payable, according to the tenor and effect thereof, to wit, on, &c. at Fort St. George aforesaid, that is to say, at, &c. caused the said bill of exchange to be *presented* and shewn to the said G. M. for payment thereof; and the said G. M. was then and there requested to pay the said sum of money in the said bill of exchange mentioned, the first and second in the said bill of exchange mentioned then and still being wholly unpaid and unsatisfied, to wit, at, &c. but the said G. M. did not then, nor at any other time whatsoever, pay the said sum of money in the said bill of exchange mentioned, or any part thereof, but then and there, to wit, at Fort St. George, that is to say, at, &c. aforesaid, neglected and *refused* so to do: and thereupon the said P. D. and Company, afterwards, to wit, on, &c. last aforesaid, at Fort St. George aforesaid, that is to say, at, &c. aforesaid, caused the said bill of exchange to be in due form of law *protested for the non-payment*; thereof, according to the usage and custom of merchants: and the said plaintiffs in fact further say, that by reason of the premises, and according to the said usage, &c. they the said plaintiffs afterwards, to wit, on, &c. last aforesaid, at, &c. aforesaid, as indorseees of the said bill of exchange, *were obliged to pay, and did pay* the said sum of money in the said bill of exchange mentioned, together with re-exchange, interest, damages, and charges thereupon, amounting to a large sum of money, to wit; the sum of one thousand pounds of lawful, &c. making together, with the said sum of one thousand five hundred pounds, a large sum of money, to wit, the sum of two thousand five hundred pounds of like lawful, &c.; of all which premises the said defendant afterwards, to wit, on, &c. at, &c. *had notice*: by reason of all which premises, and according to the usage, &c. the said defendant became and was liable to pay to the said plaintiffs the said sum of two thousand five hundred pounds last mentioned; and being so, &c. (promise of payment upon request.) (2d Count like the first, till you come to this mark x; then say, that plaintiffs presented the said bill for acceptance; then state a refusal and protestation of the bill by the plaintiffs, in the form of the first Count; and likewise aver, that the plaintiffs presented the bill for payment, and that it was refused, and afterwards the usual protestation); of all which said premises the said defendant afterwards, to wit, on, &c. at, &c. *had notice*: by reason whereof, and according to the said usage, &c. he the said defendant then and there became liable to pay to the said plaintiffs the said sum of money in the said last-mentioned bill of exchange mentioned, together with re-exchange, interest, and damages, costs and charges, amounting to a large sum of money, to wit, the sum of one thousand pounds, and making together with the said sum of one thousand five hundred pounds, a large sum of money, to wit, the sum of two thousand five hundred pounds of like lawful, &c.; and being so liable, he the said defendant

tant, in consideration thereof (as before). (Like the second, to the end of the protesting for non-acceptance, and then go on as follows). And the said plaintiffs further say, that more than sixty days are elapsed since the day on which the said G. M. so as aforesaid, had sight of the said last-mentioned bill of exchange, to wit, at, &c. by reason of all which said premises, and according to the usage, &c. the said defendants then and there became liable to pay to the said plaintiffs the said sum of money in the said last-mentioned bill specified, together with re-exchange, costs, &c. amounting to a large sum of money, to wit, the sum of, &c. and being so liable, he the said defendant afterwards, &c. undertook, &c. (A Count followed for money laid out, and another for money had and received; a sixth, on an account stated; and common conclusion.)

Averment, the sixty days are elapsed.

G. Wood.

MIDDLESEX, to wit. For that whereas the said John, William, and S. Strachey, Peter O'Brien Sevington, and Catharine S. heretofore at the respective times hereafter mentioned were persons residing, &c. to wit, the said S. S. W. R. and C. S. in parts beyond the seas, to wit, at, &c. in, &c. and the said P. O'B. S. in parts beyond the seas, to wit, at, &c. in, &c. and the said J. B. within this kingdom, to wit, at W. in the county of Middlesex; and being so respectively resident and trading, the said W. on the twenty-fifth day of December A. D. 1763, in parts beyond the seas, at, &c. aforesaid, to wit, at, &c. aforesaid, in the county aforesaid, made his certain bill of exchange in writing, subscribed with his own proper hand, according to the custom of merchants from time immemorial used and approved of within this kingdom, the said bill bearing date the day and year aforesaid, and directed the same to the said P. by the name of Mr. P. O'B. S. New York, and by the said bill required him the said P. to pay, three months after the date thereof, to the said S. S. by the name of, &c. or order, forty-five pounds York currency, for value received, and to place the same to the account of the said William; *which said bill of exchange he the said P. O'B. afterwards, and before the payment of the said sum of money contained in the said bill, or of any part thereof (a), and also before the time appointed by the said bill for the payment thereof, to wit, on the day and year aforesaid, in parts beyond the seas, at New York aforesaid, to wit, at, &c. aforesaid, in the county aforesaid, upon sight thereof accepted, according to the said custom:* and the said J. further saith, that the said S. S. to whom, or to whose order, the payment of the said sum of money contained in the said bill was to be made, afterwards and before the payment of the said sum of money contained

Declaration on a foreign bill of exchange, *Indorsement of (2) Executives of Payee Drawers, indorsed after time for payment.*

(1) Vide 3. Bac. Abr. 610. and the authorities there cited; also 3. Will. 2.

(a) This averment had better be omitted, lest the fact should turn out otherwise, when it would be a fatal variance. Cunningham. Law of Bills, 84. and the authorities there cited. Lord Raym. 575.

Payee died, having first made his will, and appointed executrix.

in the said bill, or of any part thereof, to wit, on the same day and year aforesaid, in parts beyond the seas, at A. aforesaid, to wit, at, &c. aforesaid, in the county aforesaid, died, having first duly made, published and declared, his last will and testament in writing, and thereby appointed the said C. S. sole executrix; who afterwards, to wit, on the day and year aforesaid, in parts beyond the seas, to wit, at A. aforesaid, that is to say, at Westminster aforesaid, in the county aforesaid, duly proved the same, and took upon herself the burthen of the execution thereof; and that the said C. S. executrix as aforesaid, as such executrix, afterwards and before the payment of the money in the said bill contained, or of any part thereof, to wit, on the same day and year aforesaid, in parts beyond the seas, to wit, at A. aforesaid, that is to say, at Westminster aforesaid, in the county aforesaid, according to the said custom, indorsed the said bill, her own proper hand being thereto subscribed, and by that indorsement appointed the contents of the said bill to be paid to the said J. B. and then and there delivered the said bill, so indorsed, to the said J. B.: and the said J. avers, that the said bill, at the end and expiration of the time appointed by the said bill for payment thereof, to wit, on the seventh day of September in the year of Our Lord 1764, in parts beyond the seas, to wit, at New York aforesaid, that is to say, at Westminster aforesaid, in the county aforesaid, was shewn and presented, &c. (as in the *Precedents of Payee v. Drawer*, with assumpsit to pay on request. Add another Count, leaving out what is in italic, but state that the drawee refused to accept or pay, &c. as before; money had and lent; and common conclusion.)

N. B. This bill was (3) indorsed after time for payment was expired, and after the bill was presented for payment.

- (3) 1. Show. 163.
12. Mod. 410.
Lord Raym. 575.
17. Geo. III.
c. 30. f. 1.
27. Geo. III.
c. 16.

Indorsee of a foreign bill of exchange against the *Drawer*, where the (a) drawer was not to be found.

LONDON, ff. For that whereas, at the several times hereafter mentioned, the said S. B. J. M. Thomas Bird, and George Harvey, and one other J. M. were persons residing, trading, and using commerce, to wit, the said J. M. first named, in parts beyond the seas, to wit, at Grenada, in the West Indies; and the said S. B. Thomas Bird, and George Harvey, and J. M. secondly mentioned, within this kingdom, to wit, at L. aforesaid, in the parish of St. Mary-le-Bow, in the ward of Cheap. And whereas also the said Thomas Bird and George Harvey, so being partners and joint dealers together as aforesaid, the said J. M. first named, on twelfth day of November A. D. 1786, in parts beyond the seas, to wit, at G. aforesaid, that is to say, at L. aforesaid, in the parish and ward aforesaid, made his certain bill of exchange in writing, subscribed with his own proper hand, according to the custom of merchants from time immemorial used and approved of within this kingdom, the said bill bearing date the same day and year aforesaid, and then and there directed the said bill to the said J. M. secondly named, by the name of Mr J. M. at Messrs. J. and R. Hunt's, Love Lane,

(a) Lord Raym. 743. Str. 1087.

London, and by the said bill required the said J. M. secondly named to pay, at sixty days sight of that his first bill of exchange (second and third of equal tenor and date not paid), unto the said T. B. and G. H. by the names of Messrs. B. and H. or order, thirty-three pounds six shillings and fivepence value received, and then and there delivered the said bill to the said T. B. and G. H. : and the said T. B. for himself and the said G. H. his said partner, to whom, or to whose order, the payment of the said sum of money mentioned in the said bill was to be made, afterwards, and before the payment of the said sum of money mentioned in the said bill, or of any part thereof, *(a) and also before the time appointed by the said bill for payment thereof*, to wit, on the day and year aforesaid, to wit, at L. aforesaid, in the parish, &c. aforesaid, indorser the said bill, his own proper hand being thereto subscribed, according to the custom of merchants from time immemorial used and approved of within this kingdom ; and by the said indorsement the said T. B. for himself and the said G. H. his said partner, appointed the contents of the said bill to be paid to the said S. B. and then and there delivered the said bill so indorser to the said S. B. : and the said S. B. further saith, that he the said S. B. afterwards, within a reasonable time after the making of the said bill and the indorsement thereof to the said S. B. to wit, on the eighth day of February, A. D. 1739, at L. aforesaid, in the parish, &c. aforesaid, *(b) made enquiry* after the said J. M. secondly named, upon whom the said bill was drawn, at the house of the said J. and R. Hunt's in the said bill mentioned, with intent to shew and present the said bill to the said J. M. secondly named, for his acceptance thereof, and to request the said J. M. secondly mentioned to accept the same, and to pay the said sum of money therein contained to the said S. B. according to the tenor and effect of the said bill, and of the said indorsement so made thereon as aforesaid ; but that the said J. M. secondly named was not then there found, nor could the said S. B. then, nor hath he been able hitherto since, to find the said J. M. secondly mentioned there, or in this kingdom ; nor hath he ever paid to the said S. B. the said sum of money mentioned in the said bill, or any part thereof, but the same still remains wholly due and unpaid to the said S. B. to wit, at L. aforesaid, in the parish, &c. aforesaid : by means whereof, and according to the said custom, and by the law of merchants, the said J. M. (the defendant) became liable, &c. according to the tenor and effect of the said bill, and of the said indorsement so made thereon as aforesaid, when he should be thereto afterwards requested ; and being so liable, &c. [Assumpsit accordingly ; money had, &c. and common conclusion.]

Indorser by B.
for self and partner.

(a) This averment had better be omitted. For the reasons vid. note (a), p. 305.

(b) It is sufficient to say, that drawee

non fuit inventus, without stating that inquiry was made after him, Carth. 509, 510. ; but it is the safest way to insert it, as the Books seem to vary.

Declaration, Indorsement against defendants as Drawers by procurement of a bill of exchange under the following circumstances: They had a house at Dominica, and another in London; Bruce, their attorney at Dominica, drew the present bill on their house in London, which was neither accepted nor paid, but protested for both. Declaration contains two Counts; first, stating the bill to have been protested for non-acceptance; second the like, with the subsequent protest for non-payment.

(1) Day bill was presented and protested for non-acceptance.

Second Count, Protest for non-payment.

FOR that whereas the said R. B. J. T. and R. S. one Abraham Shaw, and certain persons using the style and firm of Townson and Sorbie, at the several times hereafter mentioned, were residing, &c. to wit, the said defendants and the said A. S. in parts beyond the seas, i. e. at D. and the said plaintiff and the said persons using the style and firm of, &c. within this kingdom, to wit, at L. aforesaid, in the parish of St. Mary-le-Bow, in the ward of Cheap; and being so respectively resident, &c. they the said defendants, by Robert George Bruce their attorney, by them the said defendants for that purpose lawfully authorized and appointed, on the twenty-fifth day of July, A. D. 1778, in parts beyond the seas, i. e. at D. aforesaid, to wit, at London aforesaid, in, &c. aforesaid, made their certain bill of exchange in writing, their own proper names being thereto *subscribed (to wit, by the said R. G. B. their attorney)*, according to the custom of merchants from time immemorial used and approved of within this kingdom, and then and there directed the said bill to the said persons using, &c. (to wit, by the style and firm of Messrs. Townson and Sorbie, merchants, London), and by the said bill required the said persons using, &c. at ninety days sight of that their first bill of exchange, to pay unto the order of the said A. S. three hundred and seventy-eight pounds three shillings sterling value received, and to charge the same, with or without further advice, to the account of the said defendants, and then and there delivered the said bill to the said A. S.; and the said A. S. to whose order the payment, &c. (shew the indorsement to plaintiff); of which said indorsement, so made on the said bill as aforesaid, the said persons using, &c. upon whom the same was drawn, afterwards, to wit, on the fifth day of October, in the said year 1778, to wit, at, &c. had notice; and the said bill was then and there, to wit, on (1), &c. at, &c. by him the said plaintiff shewn and presented to the said persons using, &c. (state the presentment of the bill for acceptance, refusal, and *protest for non-acceptance*, and aver the bill not to have been negotiated); of which said several premises they the said defendants afterwards, to wit, on the day and year last aforesaid, at, &c. had notice: by reason whereof, and according, &c. defendants became liable, &c. according to the tenor and effect of the said bill; and being so liable, &c. (Assumpsit accordingly.) And whereas the said plaintiff, the said defendants, and the said A. S. and the said persons using, &c. being so respectively resident, &c. (Go on as in the first Count till you have shewn the protest for non-acceptance, then proceed thus:)—And the said plaintiff further saith, that he the said plaintiff, after the expiration of ninety days after the said bill was so presented for acceptance, to wit, on sixth January 1779, at, &c. aforesaid, duly caused the said bill to be shewn and presented unto the said persons using, &c. for payment thereof, and then and there required them to pay the money therein specified unto him the said plaintiff, according to the tenor of the said last mentioned bill; but they the said persons using, &c. did not, nor did either of them pay, nor have they or either of them at any time hitherto paid, the said money, or
any.

any part thereof, to him the said plaintiff (he the said plaintiff not having negotiated the said bill, or indorsed the same, or appointed the contents thereof to be paid to any other person) ; but the said persons using, &c. then and there wholly refused so to do ; and thereupon he the said plaintiff then and there, to wit, on the day and year last aforesaid, at, &c. aforesaid, duly caused the said bill to be *protested for non-payment* thereof ; of all which premises they the said defendants afterwards, to wit, on seventh February, in the year last aforesaid, at, &c. aforesaid, had notice : by reason whereof, &c. defendants became liable to pay, &c. when requested ; and being so liable, &c. (Assumpsit accordingly ; and the usual common Counts ; and common conclusion.)

I Fear you cannot have the evidence of Mr. Bruce (the defendant's attorney), unless plaintiff could venture to release him, and that you could also procure a release to Mr. Bruce from Mr. Shaw. But if he has a letter of attorney to draw bills, and you could produce *that*, it

might be evidence. The answer specified in the protest for non-payment amounts, in my opinion, almost to a tacit acknowledgement of Mr. Bruce's authority. You should learn what answer was given on presenting the bill for acceptance.

J. MOSCART.

THAT whereas heretofore, to wit, on the seventeenth day of April, A. D. 1780, in parts beyond the seas, that is to say, at St. Lucia, in the West Indies, to wit, at W. in the said county of Middlesex, a certain person, using commerce in and under the name and description of J. S. Burne, made his certain bill of exchange in writing, bearing date the day and year aforesaid, according to the custom of merchants in that respect used and approved of, and then and there directed the said bill to the said James Burne, by the name and description of Mr. James Burne, Custom-House, London, and thereby directed the said James Burne, at thirty days sight of that his first bill of exchange (his second, third, and fourth, of the same tenor and date, not paid), to pay to one John Duffy, in the said bill mentioned, or order, the sum of twenty-five pounds sterling, without further advice, and then and there delivered the said bill to the said John Duffy ; and the said John Duffy, to whom or to whose order the payment of the said sum of money in the said bill of exchange specified was to be made, afterwards, and before the payment of the said sum of money in the said bill specified, or of any part thereof, to wit, on the day and year aforesaid, at, &c. aforesaid, indorsed the said bill, according to the custom of merchants in that particular, and by that indorsement appointed the money in the said bill of exchange specified to be paid to the said Andrew Mackenzie, and then and there delivered the said bill so indorsed to the said A. M. ; of which said indorsement so made on the said bill as aforesaid, the said James Burne afterwards, to wit, on the first day of August, A. D. 1782, at W. aforesaid, had notice ; and the said bill was then and there shewn and presented to the said James Burne, who then and there, that is to say, on the day and year last aforesaid, at, &c. aforesaid, according

(1) Special acceptance.

Burr. 1674.

Bull. Ni. Pri.

Ed. 1730, 270.

Str. 214.

H. 1195. 221.

11. Mod. 190.

Comb. 452.

according to the custom of merchants in that particular, (1) *accepted the said bill, to pay the same, and the money therein specified, on the twenty-fifth day of January. A. D. 1783*: whereby, and by reason of which said several premises, and by force of the custom and law of merchants, he the said James Burne became liable to pay to the said A. M. the said sum of money in the said bill specified, according to the tenor and effect of his aforesaid acceptance of the said bill, and the said indorsement so thereon made as aforesaid; and being so liable, he the said James Burne, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at, &c. aforesaid, undertook, and then and there faithfully promised the said A. M. to pay him the said sum of money in the said bill specified, *according to the tenor and effect of the aforesaid acceptance* of the said bill, and the said indorsement so thereon made as aforesaid.

Declaration by original in B. R. on a bill of exchange drawn in foreign parts. Indorse against Drawer.

LONDON, to wit. If John Garden make you secure, &c. then put, by gages and safe pledges, John Baker, late of Ramsgate, in the county of Kent, esquire, that he be before our lord the king, in fifteen days from the day of Easter, wheresoever our said lord the king shall then be in England, to shew; for that whereas, at the time of the making the bill of exchange hereafter mentioned, the said John Garden and John Baker, and one Robert Gibson, and one Grey Elliott, esquire, were persons respectively residing, trading, and using commerce, that is to say, the said J. B. and R. G. in parts beyond the seas, to wit, at Bahamas, in New Providence, in America, and the said J. G. and G. E. in this kingdom, to wit, at London aforesaid, in the parish of St. Mary-le-Bow, in the ward of Cheap; and being so respectively resident, trading, and using commerce as aforesaid, the said J. B. heretofore, to wit, on the twenty-third day of June in the year of Our Lord 1785, in parts beyond the seas, to wit, at Bahamas, in New Providence aforesaid, that is to say, at London aforesaid, in the parish and ward aforesaid, according to the usage and custom of merchants from time immemorial used and approved of, made his certain bill of exchange in writing, his own proper hand being thereunto subscribed, bearing date the same day and year aforesaid, and then and there directed the said bill of exchange to the said G. E. by the name and addition of Grey Elliott, esq. under secretary of state, Whitehall; by which said bill of exchange he the said J. B. then and there required the said G. E. to pay, three months after sight thereof, that his first bill of exchange for two hundred pounds to the said R. G. by the name and addition of Captain Robert Gibson, or order, value received, and then and there delivered the said bill of exchange to the said R. G.; and the said R. G. to whom or to whose order the payment of the said sum of money, in the said bill of exchange specified, was by the said bill of exchange to be made, after the making of the said bill of exchange, and before the payment of the said sum of money in the said bill of exchange specified, or of any part thereof;

thereof, to wit, on the fifteenth day of August, in the year aforesaid, at London aforesaid, in the parish and ward aforesaid, indorsed the said bill of exchange, according to the said usage and custom of merchants; by which said indorsement he the said R. G. then and there ordered and appointed the said sum of money, in the said bill of exchange specified, to be paid to the said J. G. and then and there delivered the said bill of exchange so indorsed to the said J. G. And the said J. G. in fact saith, that after the making of the said bill of exchange, to wit, on the day and year last aforesaid, at London, &c. the said bill of exchange was shewn and presented to the said G. E. for his acceptance thereof, according to the said usage and custom of merchants, and the said G. E. then and there had sight of the said bill of exchange, and was then and there requested to accept the same, but that the said G. E. then and there wholly refused and neglected so to do; and although the said bill of exchange was afterwards, and after the expiration of three months from the day and year last aforesaid, to wit, on the eighteenth day of November, in the year aforesaid, at L. aforesaid, in the parish and ward aforesaid, shewn and presented to the said G. E. for payment thereof, according to the said usage and custom of merchants; and although the said G. E. was then and there requested to pay the said sum of money therein specified, yet the said G. E. did not, nor would, at the said time when the said bill of exchange was so shewn and presented to him for payment thereof as aforesaid, or at any time afterwards, pay the said sum of money therein specified, or any part thereof, but wholly refused and neglected so to do; of all which said several premises the said J. B. afterwards, to wit, on the day and year last aforesaid, at L. &c. had notice: by means whereof, and according to the said usage, &c. he the said J. B. then and there became liable to pay to the said J. G. the said sum of money in the said bill of exchange specified, when he the said J. B. should be thereto afterwards requested; and being so liable, &c. (Counts for money laid out, had, and received; account stated; and common conclusion.)

Drawn by Mr. TIDD.

LONDON, to wit. Solomon Solomons and Judah Philip Solomons, executors of the last will and testament of Philip Solomons deceased, complain of Richard Staveley, being in the custody of the marshal of the marshalsea of our lord the now king, before the king himself; for that whereas the said Philip Solomons, the testator, in his lifetime, the said Richard, and one John O'Donnell, and one Eliza Parkinson, were, at the several times hereafter mentioned, persons residing, trading, and using commerce, to wit, the said P. S. the testator, Richard, and Eliza, at London, in the parish of St. Mary-le-Bow, in the ward of Cheap, and the said John O'Donnell in parts beyond the seas, to wit, at Bengal, in the East Indies; and being so residing, trading, and using commerce respectively, the said Eliza, according to the custom of merchants

Declaration on a bill of exchange for foreign money, at the suit of the Executors of Indorsee v. Indorsee.

chants from time immemorial used and approved of, on the first day of January, in the year of Our Lord 1778, at London aforesaid, in the parish and ward aforesaid, made her certain bill of exchange in writing, her own proper hand being thereto subscribed, bearing date the same day and year aforesaid, and then and there directed the said bill to the said John O'Donnell, by the name and description of John O'Donnell, esquire, Ferokabad or Calcutta, Bengal, and thereby required, at sixty days sight of that her second of exchange, her first and third of the same tenor and date not being paid, to pay to the said Richard, by the name and addition of Richard Staveley, esquire, or order, in Calcutta, five thousand current rupees, for value received, with or without advice, and then and there delivered the said bill to the said Richard: and the said Solomon and Judah Philip, executors as aforesaid, aver, that the said five thousand current rupees were and are *foreign money*, to wit, money of Bengal, in the East Indies, and were and are of great value, to wit, of the value of one thousand pounds of lawful money of Great Britain; and the said Richard, to whom or to whose order the payment of the said sum of money, mentioned in the said bill, was to be made, afterwards, and before the payment thereof, or of any part thereof, to wit, on the same day and year aforesaid, at London aforesaid, in the parish and ward aforesaid, *indorsed* the said bill, his own proper hand being thereto subscribed; and by that indorsement he the said Richard appointed the contents of the said bill to be paid to the said Philip Solomons in his lifetime, and then and there delivered the said bill, so indorsed as aforesaid, to the said Philip Solomons in his lifetime: and the said Solomon and Judah Philip, executors as aforesaid, in fact say, that the said Philip Solomons in his life-time, afterwards, to wit, on, &c. at Bengal aforesaid, to wit, at London aforesaid, in the parish and ward aforesaid, shewed and presented the said bill to the said John for his acceptance thereof, according to the said custom, and then and there required him to accept the same; but that the said John, when the said bill was so presented to him by the said Philip in his lifetime for such purpose, *did not accept the said bill, but then and there wholly refused then or ever to accept the same*, or pay to the said Philip in his lifetime the said sum of money mentioned therein, or any part thereof: and the said Solomon and Judah Philip, executors as aforesaid, further say, that the said Eliza hath not paid the said sum of money mentioned in the said bill, or any part thereof, to the said Philip in his lifetime, or to the said Solomon and Judah, executors as aforesaid, since the death of the said Philip, or to either of them, but to pay the same, or any part thereof, to the said Philip in his lifetime, or to the said Solomon and Judah, executors as aforesaid, or to either of them since the death of the said Philip, she the said Eliza hath hitherto wholly refused, and still refuses; of all which said promises the said Richard afterwards, *and with all convenient speed, to wit, on, &c. at, &c. had (1) notice*: by reason whereof, and by force of the said custom and law of merchants, the said Richard became liable to pay to the said Philip,

Indorsement.

Refusal to accept.

(1) Burr. 2670.
3. T. R. 712.

in his lifetime, the said sum of money mentioned in the said bill ; and the said Richard being so liable, in consideration thereof, afterwards, to wit, on, &c. at, &c. in, &c. undertook, and then and there faithfully promised the said Philip, in his lifetime, to pay him the said sum of money mentioned in the said bill, when he should be thereto afterwards requested. And whereas, at the several times hereafter mentioned, the said Philip in his lifetime, John, Richard, and Eliza, so being respectively residing, trading, and using commerce as aforesaid, the the said Eliza, according to the said custom of merchants, afterwards, to wit, on, &c. at, &c. in, &c. made her certain other bill of exchange in writing, her own proper hand being thereto subscribed, bearing date, &c. &c. (Finish this Count same as the first, only, instead of " five thousand " rupees," say " ten thousand," of the value of two thousand pounds. Add the common money Counts.) Yet the said Richard, not regarding, &c. but contriving, &c. the said Philip in his lifetime, and the said Solomon and Judah, executors as aforesaid, since the death of the said Philip, in this respect, hath not yet paid the said several sums of money, or any part thereof, *either in foreign money, or in lawful money of Great Britain, at Calcutta aforesaid, or elsewhere, to the said Philip in his lifetime, or to the said Solomon and Judah, executors as aforesaid, since the death of the said Philip, or to either of them, although so to do the said Richard was requested by the said Philip in his lifetime, and often afterwards, and by the said Solomon and Judah, executors as aforesaid, since the death of the said Philip, to wit, on, &c. at, &c. but he to pay the same, or any part thereof, to them, or any or either of them, hath hitherto wholly refused, and still refuses, to pay the same, or any part thereof, to the said Solomon and Judah, or to either of them, to the damage of the said Solomon and Judah, as executors as aforesaid, of three thousand pounds ; and therefore they bring their suit, &c. : with this, that the said Solomon and Judah will verify, that the first and third bills of exchange, of the same tenor and date of the said bills of exchange in this declaration mentioned, are not, nor is either of them, paid ; and the said Solomon and Judah bring here into court the letters testamentary of the said Philip the testator in his lifetime, which sufficiently prove to the Court here, that they are executors of that will, and have the administration thereof.*

Second Count.

Conclusion.

Averment that first and third are not paid. Prefers of letters testamentary.

J. MORGAN.

And the said Richard, by A. B. his attorney, comes and defends the wrong and injury, when, &c. ; and as to the said promises and undertakings in the said first and second Counts of the said declaration mentioned, says, that the said Solomon and Judah (*ad id non*) ; because he says, that the said first and second Counts of the said declaration, and the matters therein contained, are not sufficient in law for the said Solomon and Judah to have their said action thereof maintained against him the said Richard ; to which said first and second Counts of the said declaration, in the manner the same are above made, the said Richard is not under any necessity, nor obliged

Demurrer to the first two Counts ; and, as to the common Counts, that defendant did not undertake, &c.

obliged by the law of the land, to answer ; and this he is ready to verify : wherefore, for want of a sufficient declaration in this behalf, he prays judgment, and that the said Solomon and Judah may be barred from having or maintaining their aforesaid action thereof against him, &c. : and as to the said promises and undertakings in the said third, fourth, fifth, and last Counts of the said declaration mentioned, the said Richard says, that he did not undertake and promise in manner and form as the said Solomon and Judah have above thereof complained against him ; and of this he puts himself upon the country, &c. ; and the said Solomon and Judah do the like, &c.

F. BOWER,

joinder in de-
murrer.

And the said Solomon and Judah say, that by reason of anything above alledged by the said Richard as to the first and second Counts of the said declaration, they the said Solomon and Judah ought not to be barred from having and maintaining their said action thereof against the said Richard ; because they the said Solomon and Judah say, that the said first and second Counts of the said declaration, and the matters therein contained, are good and sufficient in law for them the said Solomon and Judah to have and maintain their said action against the said Richard ; which said first and second Counts of the said declaration mentioned, and the matters therein contained, they the said Solomon and Judah are ready to verify and prove, as the Court shall award : and because the said Richard hath not answered the first and second Counts of the said declaration, nor hitherto in any manner denied the same, they the said Solomon and Judah pray judgment, and their damages by reason of the premises, to be adjudged to them, &c.

J. MORGAN,

Judgment was given for the plaintiffs.

Declaration on a foreign bill of exchange by Indorsers against an Acceptor who accepted for the honour of the drawers, merchants abroad, to prevent the bill being returned for non-acceptance by drawees, who had refused to accept, (stating the custom.) See the last precedent, stating the custom (a)

FOR that whereas there now is, and from time whereof the memory of man is not to the contrary there hath been, a certain ancient and laudable custom used and approved of amongst merchants and other persons residing, trading, and using commerce within this kingdom, and merchants and other persons residing, trading, and using commerce in parts beyond the seas, namely, that if any merchant or other person residing, trading and using commerce in parts beyond the seas, shall at any time have made any bill or bills of exchange in writing, subscribed with his own hand, and shall have directed such bill or bills of exchange to any merchant or other person residing, trading and using commerce in this kingdom, and by such bill or bills shall have required such merchant or other person to whom such bill or bills shall have been so directed, to pay any other merchant or other person residing, trading, and using commerce in parts beyond the seas, or to the order of such merchant or other person, any sum or sums of money mentioned in such bill or bills, at any time or times by such bill

(a) The custom of merchants is here stated merely to shew what it is ; modern precedents omit it.

or bills appointed for the payment thereof; and if any such merchant or other person to whom, or to whose order, any such sum or sums of money shall have been by such bill or bills made payable, before the payment of any such sum or sums of money mentioned in such bill or bills, or any part thereof, and before the time appointed by such bill or bills for the payment thereof, shall have *indorsed* any such bill or bills, his own proper hand-writing being thereto subscribed, and by such indorsement shall have appointed the contents of such bill or bills to be paid to any other merchant or other person residing, trading, and using commerce within this kingdom, and shall have delivered such bill or bills, so indorsed, to such merchant or other person to whom such bill or bills shall have been so indorsed; and if such merchant or other person to whom such bill or bills shall have been so indorsed shall have *presented* such bill or bills to such merchant or other person to whom such bill or bills shall have been so directed, for acceptance thereof, and shall have required such merchant or other person to whom such bill or bills shall have been so directed, to *accept* such bill or bills, and such merchant or other person to whom such bill or bills shall have been so directed shall have *refused to accept* such bill or bills, and such merchant or other person to whom such bill or bills shall have been so indorsed shall have caused such bill or bills to be duly *protested for want of acceptance* thereof: and if such merchant or other person to whom such bill or bills shall have been so indorsed shall afterwards, when such bill or bills shall have become payable, have *presented* such bill or bills to such merchant or other person to whom such bill or bills shall have been so directed for payment thereof, and shall have required such merchant or other person to whom such bill or bills shall have been so directed, to pay such sum or sums of money in such bill or bills mentioned; and if such merchant or other person to whom such bill or bills shall have been so directed shall upon such *presentment of such bill or bills for payment* thereof, have refused to pay such sum or sums of money in such bill or bills mentioned, and thereupon such merchant or other person to whom such bill or bills shall have been so indorsed shall have caused such bill or bills to be *protested for the non-payment* thereof; and if any other merchant or other person residing in this kingdom, to prevent such bill or bills being sent back or returned to the drawer thereof, shall, *after such second protest thereof, have accepted* such bill or bills in writing, and shall have subscribed such acceptance on the said bill or bills with his own hand; that then such merchant or other person who shall have so accepted such bill or bills, for all the time aforesaid, whereof the memory of man is not to the contrary, hath been, and still is, (2) *liable* to pay to the holder or holders of such bill or bills such sum or sums of money mentioned in such bill or bills, according to the tenor and effect of such bill or bills, and of such acceptance thereof: and the said W. C. further says, that at the several times hereafter mentioned, one W. D. and one W. P. were merchants

Indorsement.

Presentment.

Acceptance.

Refusal to accept.

Protest for want of acceptance.

Presentment for payment.

Protest for non-payment.

Acceptance (2) for the honour of drawer, after 2d protest.

Such acceptor liable, &c.

W. D. drew his bill of exchange.

(1) Ann. 74. Str. 1000. *Baverstock v. Titter*, B. R. (2) *Sittings in M. T.* 24. Geo. III. Str. 817. s. Will. 9. Burr. 1672. 1. T. R. 185. Lutw. 899. Lord Raym. 364. 12. Mod. 211. Salk. 127. Lord Raym. 574. 12. Mod. 410. Salk. 129.

or other persons residing, trading, and using commerce in parts beyond the seas, to wit, at New York in North America; and the said W. C. and R. B. and one T. H. were at those several times merchants or other persons residing, trading, and using commerce within this kingdom, to wit, at, &c. in, &c.; and being so respectively residing, trading, and using commerce as aforesaid, the said W. D. on, &c. according to the said custom, in parts beyond the seas, to wit, at, &c. made his certain bill of exchange in writing, his own proper hand being thereunto subscribed, and then and there directed the said bill of exchange to the said T. H. by the name of, &c. and by the said bill required the said T. H. at thirty days after sight of that his second bill of exchange, first and third of the same tenor and date not paid, to pay to the said W. P. called in the said bill by the name of, &c. or order, the sum of thirty pounds sterling, *advanced for the ship Adventure*, with or without advice from the said W. D.; and the said W. P. to whom, or whose order, the payment of the said sum of money mentioned in the said bill, was by the said bill to be paid, afterwards, and before the payment of the said sum of money mentioned in the said bill, or any part thereof, and also before the time appointed by the said bill for the payment thereof, to wit, on, &c. in parts beyond the seas, to wit, at, &c. according to the said custom, by the name of W. P. *indorsed* the said bill, his own proper hand being thereunto subscribed, and by the said indorsement appointed the contents of the said bill to be paid to the said W. C. and afterwards, to wit, on, &c. at, &c. delivered the said bill, so indorsed, to the said W. C.; and which said bill of exchange he the said W. C. afterwards, to wit, on, &c. at, &c. according to the said custom, shewed and *presented to the said T. H. for acceptance thereof*, and then and there, according to the said custom, required the said T. H. to accept the said bill, according to the said custom; but the said T. H. did not, nor would, upon such sight thereof, accept the same, but then and there wholly refused to accept the same; and thereupon the said W. C. afterwards, to wit, on, &c. at, &c. duly caused the said bill to be *duly protested for the non-acceptance* thereof; and the said W. C. afterwards, to wit, on, &c. being the day on which the said bill became due and payable, according to the said custom, at, &c. in, &c. *presented* and shewed the said bill to the said T. H. for *payment* thereof, and then and there required the said T. H. to pay the same to him the said W. C. according to the tenor and effect of the said bill, but that the said T. H. did not, nor would then pay the same, but then and there wholly refused to pay the same; whereupon the said W. C. according to the said custom, afterwards, to wit, on, &c. at, &c. duly caused the said bill to be *duly protested for the non-payment* thereof; of all which premises the said R. B. afterwards, to wit, on, &c. at, &c. had notice; and thereupon the said R. B. afterwards, to wit, on, &c. at, &c. in order to *prevent the said bill from being sent back* and returned under the said protest thereof to the said W. D. and after the said

under

two protests thereof, so made as aforesaid, accepted the said bill in writing, and subscribed the said acceptance on the said bill with his own hand, according to the said custom: and by reason of the premises, and according to the said custom, the said R. B. became liable to pay to the said W. C. who then was, and still is, the holder of the said bill, the said sum of money mentioned in the said bill, according to the tenor and effect of the said acceptance thereof; and being so liable, he the said R. B. in consideration thereof, afterwards, to wit, on, &c. at, &c. undertook, and then and there faithfully promised the said W. C. to pay him the said sum of money mentioned in the said bill, according to the tenor and effect of his said acceptance thereof as aforesaid: and the said W. C. further says, that the said first and third bills mentioned in the said second bill of exchange, so accepted as aforesaid, are not yet paid, nor is either of them yet paid; and the said bill, so accepted by the said R. B. *hath not yet been sent back* or returned to the said W. D.; of all which premises the said R. B. afterwards, to wit, on, &c. at, &c. had notice: Yet the said R. B. not regarding the said custom, nor his promise and undertaking aforesaid, but contriving, &c. hath not yet paid to the said W. C. the said sum of thirty pounds or any part thereof, according to his said acceptance thereof, (although, &c.) but he, &c. and the said sum of thirty pounds mentioned in the said bill so accepted as aforesaid, is still wholly unpaid to the said W. C. to wit, at, &c.

Acceptance of
two protests,
to prevent bill
being sent back

Averment, that
first and second
not paid, and
that bill hath
not been sent
back.

LONDON, ff. If Jacob Gottfield Heppius make you secure, &c. then put, &c. John Amberg, late of Hull, in the county of York, merchant, that he be before our lord the king, in fifteen days, &c. of Easter, wheresoever, &c. to shew; for that whereas, at the several times hereafter mentioned, the said Jacob Gottfield Heppius and certain persons using the name, style, and firm of Samuel Valley and Sons, and the said John Amberg and one Nul Amberg were persons respectively residing, trading, and using commerce, to wit, the said plaintiff and persons using the name, style, and firm of S. V. and Sons, in this kingdom, to wit, at London, in the parish of St. Mary le Bow, in the ward of Cheap, and the said defendant, at Hull aforesaid, and the said Nul Amberg, in parts beyond the seas, to wit, at Gessle; and being so respectively residing, trading, and using commerce, the said N. A. heretofore, to wit, on the fourth day of February, in the year of Our Lord 1788, in parts beyond the seas, to wit, at Gessle aforesaid, made his certain bill of exchange in writing, subscribed with his hand-writing, bearing date the same day and year aforesaid, according to the custom of merchants used and approved of within this kingdom from time immemorial, directed to the said defendant by the name and description of, &c. and by the said bill requested

Præcipe of Declaration by original on a foreign first bill of exchange, First Indorsee v. Acceptor, and not paid.

quested the said defendant, at ninety days after date, to pay, in London, for that his first bill of exchange (second not paid) to the order of the said persons so using the name, style, and firm of S. V. and Sons, by the name of Messrs. Samuel Valley and Sons, three hundred pounds English sterling, value received, and then and there delivered the said bill to the said persons so using the name, style, and firm of S. V. and Sons; which said bill of exchange the said defendant afterwards, and before the time appointed by the said bill for payment thereof, to wit, on the twentieth day of the said month of February, at London aforesaid, in the parish and ward aforesaid, upon sight thereof accepted, according to the said custom, to be paid at Messrs. Robert and Thomas Harrison's, bankers, London. And the said persons so using the name, style, and firm of S. V. and Sons, to whose order the said sum of money in the said bill mentioned was to be paid, after the making of the said bill, and before the payment of the said sum of money therein mentioned, or of any part thereof, and also before the time appointed by the said bill for the payment of the money therein mentioned, that is to say, on the day and year last aforesaid, at London aforesaid, in the parish and ward aforesaid, indorsed the said bill according to the said custom, and by that indorsement appointed the contents of the said bill to be paid to the said plaintiff, and then and there delivered the said bill so indorsed to the said plaintiff; of which said indorsement he the said defendant afterwards, to wit, on the same day and year last aforesaid, at London aforesaid, in the parish and ward aforesaid, had notice: by reason of which said premises, and according to the said custom, and by the law of merchants, he the said defendant became liable to pay to the said plaintiff the said sum of money mentioned in the said bill, according to the tenor and effect of the said bill, and his said acceptance thereof, and the said indorsement so made thereon as aforesaid; and being so liable, he the said John, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at London aforesaid, in the parish and ward aforesaid, undertook, and faithfully promised the said plaintiff to pay him the said sum of money in the said bill mentioned, according to the tenor and effect of the said bill, and his said acceptance thereof, and the said indorsement so made thereon as aforesaid. (2d Count, money had and received the seventh of May 1788. 3d Count, money laid out. 4th Count, money lent and advanced. 5th Count, account stated.) And the said plaintiff in fact further says, that although the said second bill of exchange, alluded to and mentioned in the said bill of exchange herein before mentioned, hath not been as yet been paid or satisfied; yet, &c. (shewing the request as well at R. and J. Harrison's, bankers, London, as elsewhere at London, the seventh of May, the day the bill became payable.—Common conclusion.)

BY SECOND INDORSEE.

FOR that whereas one M. C. heretofore, to wit, on, &c. in parts beyond the seas, to wit, at A. in F. that is to say, at W. in the county of Middlesex, according to the custom of, &c. made and drew his certain bill of exchange in writings, in the French language, bearing date, &c. upon one C. H. and one E. H. and by the said bill then and there required them the said C. and E. at two usances, to pay that first bill of exchange to the order of one G. A. in the said bill named, fifty pounds sterling value received, which should be passed without the advice of him the said M. C. and then and there delivered the said bill to the said G. A. which said bill of exchange they the said C. and E. afterwards and before the payment of the said sum therein specified, or of any part thereof, to wit, on, &c. at, &c. accepted, according to the custom of, &c. in that particular: and the said G. A. to whose order the payment of the said sum of money in the said bill specified was to be made, afterwards, and before the payment of the said sum of money in the said bill mentioned, or of any part thereof, to wit, on, &c. at, &c. (*) *indorsed* the said bill according to the aforesaid custom, and by that *indorsement* appointed the said sum of money in the said bill mentioned to be paid to the said defendants, and then and there delivered the said bill so *indorsed* to them the said defendants; and the said defendants, to whom or to whose order the payment of the said sum of money in the said bill mentioned was by virtue of the said *indorsement* so made thereon as aforesaid, to be made afterwards, and before the payment of the said sum of money therein mentioned, or of any part thereof, to wit, on, &c. at, &c. *indorsed* the said bill of exchange, and by that *indorsement* appointed the said sum of money in the said bill specified to be paid to the said plaintiff, and then and there delivered the said bill, so *indorsed* as aforesaid, to the said plaintiff: and the said plaintiff avers, that the said two (1) usances in the said bill mentioned, and thereby appointed for the payment thereof, were meant and intended to be, and in fact were and are, two calendar months from the date of the said bill, and that afterwards, to wit, on, &c. [when the said bill became and was due and payable] at W. aforesaid, the said bill was in due manner presented to the said E. and C. for payment of the money therein mentioned, and the said E. and C. were then and there required to pay the same to him the said plaintiff, according to the tenor and effect of the said bill, and the aforesaid acceptance and *indorsement* thereof; but that the said E. and C. did not, nor did either of them, when the said bill was so shown and presented to them as aforesaid, or at any other time whatsoever, pay the said sum of money therein mentioned, or any part thereof, to him the said plaintiff.

Second Indorsee v. Second Indorser (a) 2 Show. 501. Comb. 32. Skin. 255, 256, 343, 411. 3. Mod. 87. 12 Mod. 36. Ld. Raym. 181, 444, 744. Salk. 125, 132, 133. 3. Salk. 68. Str. 442, 479. 1. Atk. 282. 2. Atk. 182. Burr. 670, 675. Doug. 613.

(*) Different kinds of indorsement. Holt, 117. Ld. Raym. 176, 810. 12. Mod. 244, 192. Salk. 126, 130, 128. Ld. Raym. 44. Doug. 611, 617. Bl. 296, 299. Burr. 1227. Doug. 615. Bl. 293. Burr. 1216. Str. 557. Bull. Ni. Pri. Ed. 1790. p. 275. 12. Mod. 213. Ld. Raym. 360. Carth. 466. 3. Salk. 70. 2. Will. 262. Doug. 630. 1. T. Rep. 654. Salk. 126, 70. Burr. 452, 1516. Doug. 611. Tatlock & al. against Harris. 3. T. Rep. B.R. 174. 9. Mod. 44. Carth. 5. 2. Vent. 307. Skin. 264. Doug. 630. 3. Will. 5. 1. T. Rep. 489.

Will. 3. 10. Mod. 246. Str. 516. 3. Will. 1. 2. Str. 1260. 2. Barnes, 137. 1. Doug. 496.
(1) Salk. 131. 3. Keb. 645.

(2) Ld. Raym. 993. 6. Mod. 80. Salk. 131. 3. Salk. 69. Salomons v. Stavley, B. R. M. 24. G. III. 9. & 10. W. 3. 8. 17. C. 1. Str. 910. 1. T. Rep. 269. Doug. 659. 2. T. Rep. 717. 3. & 4. Ann. c. 9. f. 4. Doug. 497. Str. 217.

ad Count states plaintiff to be possessed of a banker's check given in payment of a bill of exchange by defendants, which was delivered over to them for inspection by plaintiff at their request; that they destroyed it; *per quod*, and also by means of the drawees of such bill having become insolvent, plaintiff has no other remedy against defendants.

plaintiff, but, on the contrary thereof, then and there wholly refused so to do, and therein wholly failed and made default; whereupon he the said plaintiff caused the said bill to be (2) protested for such non payment thereof, according to the custom of merchants in that particular, to wit, at, &c. whereof and of which said several promises the said defendants afterwards, to wit, on, &c. at, &c. had notice: by reason whereof, and of the said several other premises, and by force of the custom and the law of merchants, they the said defendants became liable to pay to the said plaintiffs the said sum of money in the said bill mentioned, when they should be thereto afterwards requested; and being so liable, &c. [promise of payment upon request.] *And whereas* the said plaintiff afterwards, to wit, on, &c. at, &c. was lawfully possessed of a certain draft or order for the payment of money, commonly called a banker's check, or draft upon a banker, bearing date, &c. and then and there drawn by the said defendants upon certain bankers carrying on business by and under the style or firm of, &c. and requiring them to pay to the said plaintiff or bearer the sum of fifty pounds; and which said draft or order had been and was then and there drawn and given by the said defendants to the said plaintiffs upon a good and *bona fide* consideration, to wit, in payment of a certain bill of exchange before then drawn by one M. C. upon the said E. and C. in favour of the said G. A. and by him indorsed to the said defendants, and by them indorsed over to the said plaintiff; and thereon afterwards, and before the payment of the said draft or order to the said plaintiff, to wit, on, &c. at, &c. in consideration that the said plaintiff, at the special instance and request of the said defendants, would deliver to them the said defendants the said draft or order for the purpose of inspection thereof, they the said defendants undertook, &c. the said plaintiff, to return the said draft or order to him the said plaintiff immediately after such inspection thereof: and the said plaintiff in fact saith, that although he the said plaintiff, confiding in the said promise and undertaking of the said defendants, did upon the making thereof, to wit, on, &c. at, &c. deliver to the said defendants the aforesaid draft or order for the purpose of such inspection thereof as aforesaid; and although such inspection thereof was then and there had and made; yet the said defendants, not regarding the said promise and undertaking so by them made in this behalf as aforesaid, did not immediately after such inspection of the said draft or order as aforesaid, or at any other time whatsoever, (although requested) return the same to the said plaintiff, but omitted and neglected so to do; and on the contrary thereof, afterwards, to wit, on, &c. at, &c. wrongfully, and without the leave or licence, and against the will of the said plaintiff, tore to pieces and destroyed the said draft or order; whereby he the said plaintiff then and there, and always from thence hitherto, was and hath been hindered and prevented from obtaining payment of the said draft or order, and of the money therein

therein mentioned, and of the said bill of exchange for which the same was so given as aforesaid; by reason whereof, and that the said E. and C. on whom such bill was drawn, are since become insolvent, the said sum of money in the said bill mentioned became and was and is altogether irrecoverably and wholly lost to him the said plaintiff other than against the said defendant; to wit, at, &c.

BY THIRD INDORSEE.

LONDON, *ff.* A. L. R. H. and J. M. *executors* of the last will and testament of P. L. deceased, complain of J. B. being, &c. for that whereas, in the lifetime of the said P. L. &c. &c. [state the bill; delivery to the payee, indorsement, according to the custom of merchants, to J. K. and by him to A. L. one of the plaintiffs, and by him to the order of the plaintiffs' testator, and delivery to him *, notice of such indorsements to the drawee.] And the said plaintiffs, executors as aforesaid, aver, that the said bill was afterwards, in the lifetime of the said P. L. and before the payment of the said sum of money therein mentioned, or of any part thereof, to wit, on, &c. at, &c. shewn and presented to the said J. C. for his acceptance thereof, and he the said J. C. was then and there requested to accept the same; and the said J. C. did not nor would then and there accept the said bill; and thereupon the said bill was afterwards, to wit, on, &c. at, &c. *protested for non-acceptance*, according to the said custom. And the said plaintiffs, executors aforesaid, further say, that at the end and expiration of the time appointed for the payment of the said bill, to wit, on the twelfth day of June in the year last aforesaid, at, &c. aforesaid, the said bill was again shewn and presented to the said J. C. for payment of the money therein mentioned, and the said J. C. was then and there requested to pay the said sum of money, in the said bill mentioned, to the said P. L. according to the tenor of the said bill, and the said several indorsements so made thereon as aforesaid; but the said J. C. did not then and there, nor at any other time, pay the said sum of money in the said bill mentioned, or any part thereof, to the said P. L. but then and there neglected and refused so to do, and therein wholly failed and made default: and thereupon the said P. L. afterwards in his lifetime, to wit, on, &c. at, &c. caused the said bill to be duly protested for non-payment thereof; of all which said several premises the said defendant afterwards, to wit, on, &c. at, &c. had notice: by reason whereof, and according to the said custom and by the law of merchants, he the said defendant became liable to pay to the said P. L. [on request; and being so liable, &c. promised, &c.] And the said plaintiffs aver, that the said bill of exchange hath not been indorsed over or negotiated either by the said P. L. in his lifetime, or by the said

*Declaration;
Executors of
Third Indorsee v.
Drawer, for non-
acceptance (1) and
non-payment of
bill second of
exchange, first,
third, and fourth
of the same te-
nor and date
unpaid, drawn
at Charlestown,
North America,
upon J. C.
esquire, Kil-
boyne, county of
Mayo, Ireland,
at thirty days
sight.*

3d Count states
Drawee *not to*
be found, and
protest in con-
sequence.

plaintiffs since his death; nor have the said first, third, and fourth bills therein mentioned, or either of them, been paid or satisfied. And whereas, &c. [same as the first, till you have stated all the indorsements at this x mark above, then go on thus:] And the said plaintiffs, executors as aforesaid, aver, that after the making of the said several indorsements so made on the said last-mentioned bill as aforesaid, and in the lifetime of the said P. L. to wit, on the said ninth day of May in the year 1783, to wit, at, &c. aforesaid, due and diligent inquiry was made after the said J. C. on whom the said last-mentioned bill was so drawn as last aforesaid, with the intent to shew and present the said last-mentioned bill to him for his acceptance thereof, and to request him to pay the same; and at the end and expiration of thirty one days from such inquiry, further inquiry was made after the said J. C. with intent to shew and present the said last-mentioned bill to him for payment, according to the tenor and effect of the said last-mentioned bill, and the said several indorsements so made thereon as aforesaid: but the said plaintiffs in fact further say, that the said J. C. *was not upon such inquiries, or at any other time, found or to be found* by the said P. L.; nor did he pay the said sum of money in the said last-mentioned bill specified, or any part thereof, to the said P. L.: whereupon the said P. L. afterwards, in his lifetime, in due manner, and according to the said custom of merchants, caused the said last-mentioned bill to be protested, to wit, at, &c. aforesaid; whereof, and of all which said several premises, he the said defendant afterwards, in the lifetime of the said J. C. to wit, on, &c. at, &c. had notice: whereby, and by reason of which said several premises, and by force of the said custom, and by the law of merchants, he the said defendant became liable to pay [on request; and being so liable, promised to pay: like averment as to not having indorsed, and non-payment of first, third, and fourth, &c.] And whereas, &c. [same as first and second, till you have stated all the indorsements at this x mark, then go on thus:] And the said plaintiffs, executors as aforesaid, in fact further say, that the said last-mentioned bill having been so indorsed as aforesaid, *but not as yet accepted*, although due diligence had been used for that purpose, they the said plaintiffs, as such executors as aforesaid, were, after the death of the said P. L. to wit, on the sixth day of May A. D. 1783, at, &c. aforesaid, about and were ready and willing, and then and there offered the said defendant to send over to Ireland for the purpose of shewing and presenting, or endeavouring to shew and present, the said last-mentioned bill to the said J. C. according to the tenor and direction of the said last-mentioned bill in that behalf, for acceptance and payment, according to the tenor and effect of the said last-mentioned bill, and would have accordingly presented the same; but the said defendant then and there wholly *dispensed with and relinquished* the presentment of the said last-mentioned bill to the said J. C.; and, in consideration of the several premises before in this Count mentioned, undertook, and then and there faithfully *promised*

Indorsee would
have sent to Ire-
land, but defend-
ant dispensed
with the pre-
sentment.

missed the said plaintiffs, as such executors as aforesaid, to pay to them the said sum of money in the said last-mentioned bill specified: whereby, and by reason of which said several premises, and according to the custom and law of merchants, he the said defendant became liable to pay to the said plaintiffs, as such executors as aforesaid, the said sum of money in the said last-mentioned bill specified; and being so liable, he the said defendant, in consideration thereof, afterwards, to wit, on, &c. at, &c. undertook, &c. to pay to plaintiffs: like averment as to not having indorsed, and non-payment of first, third, and fourth, &c.

MIDDLESEX, to wit. S. P. late of, &c. was attached to answer A. G. and D. A. of a plea of trespass on the case; and whereupon the said plaintiffs, by A. B. their attorney, complain, that whereas, at the several times hereinafter mentioned, the said plaintiffs were partners and joint dealers in trade, to wit, at, &c.; and whereas also, at the several times hereinafter mentioned, one R. L. one P. P. B. and also two persons respectively using trade and commerce by the respective styles and firm of Chevalier and Mercier and the said plaintiffs were residing and using commerce, to wit, the said R. L. and P. P. B. and the said Chevalier and Mercier, in parts beyond the seas, to wit, at Calais, in the kingdom of France, and the said plaintiffs and defendant within this kingdom, to wit, at, &c. and being so respectively residing, trading, and using commerce as aforesaid, the said R. L. on, &c. in parts beyond the seas, to wit, at Calais, in the kingdom of France, according to the usage and custom of merchants from time immemorial used and approved of, made his certain bill of exchange in writing, his own proper hand being thereunto subscribed, bearing date the same day and year aforesaid, and then and there directed the said bill to the said defendant, by the name and description of, &c. and by the said bill required the said defendant, at four usances, to pay by that first of exchange to the order of the said P. P. B. by the description of, &c. three thousand six hundred and fifty-eight *livres*, value received of the said P. P. B. which the said defendant was to pass according to advice from the said R. L. which said bill of exchange he the said defendant afterwards, to wit, on, &c. at, &c. according to the usage and custom of merchants aforesaid, *accepted, payable at Paris, at the house of A. B. bankers*; and the said P. P. B. to whose order the payment of the said sum of money mentioned in the said bill, was thereby appointed to be made, and before the payment of the said sum of money mentioned in the said bill, or of any part thereof, to wit, on, &c. at, &c. indorsed the said bill, his own proper hand being thereunto subscribed; and by that indorsement he the said P. P. B. then and there appointed the contents of the said bill to be paid to the order of the said Chevalier, by the description of, &c. for value received, and then and there delivered the said bill so indorsed to the said Chevalier; and the said Chevalier afterwards,

Declaration by original in B. R. on a foreign bill of exchange for foreign money, written in French by Third Indorsee against Defendant, who accepted it, payable at Paris, at the house of a banker, stating that the bill was presented at Paris.

Indorsement;

2d Indorsement.

and before the payment of the said sum of money mentioned in the said bill, or of any part thereof, to wit, on, &c. at, &c. *indorsed* the said bill, his own proper hand being thereunto subscribed; and by the said last-mentioned indorsement, he the said Chevalier then and there appointed the contents of the said bill to be paid to the order of Mercier, by the description of, &c. for value received, and then and there delivered the said bill so indorsed to the said Mercier; and the said Mercier afterwards, and before the pay-

3d Indorsement.

ment of the said sum of money mentioned in the said bill, or of any part thereof, to wit, on, &c. *indorsed* the said bill, his own proper hand being thereto subscribed; and by the said last-mentioned indorsement, he the said defendant then and there appointed the contents of the said bill to be paid to the said plaintiffs, and then and there delivered the said bill so indorsed to the said plain-

Presented.

tiffs: and the said plaintiffs in fact say, that the said bill afterwards, and when the same became due and payable, to wit, on, &c. at, &c. was shewn and *presented* at Paris, at the house of A. B. for the payment thereof; but the said A. B. did not, nor did the said defendant, then pay the said sum of money mentioned in the said bill, according to the tenor and effect of the said bill; of which said premises the said plaintiffs afterwards, to wit, on, &c. at, &c. gave notice to the said defendant: and the said plaintiffs further say, that the said three thousand six hundred and fifty-eight livres, in the said bill of exchange mentioned, are, and at the time of the making of the said bill were, *foreign money*, to wit, money of the kingdom of France; and at the time of making of the said bill of exchange were, and from thence hitherto have been, and now are, of great value, to wit, of the value of two hundred pounds of lawful money of Great Britain, to wit, at, &c. whereof the said defendant afterwards, to wit, on, &c. there had notice: by reason of which said premises, and also by force of the usage and custom of merchants aforesaid, he the said defendant became liable to pay to the said plaintiffs the said sum of money, in the said bill of exchange mentioned, being of the value aforesaid, according to the tenor and effect of the said bill, and the said indorsements thereon, and his said acceptance thereof as aforesaid; and being so liable, he the said defendant, in consideration thereof, afterwards, to wit, on, &c. at, &c. undertook, and then and there faithfully promised them, the said plaintiffs, to pay them the said sum of money specified in the said bill of exchange, being of the value aforesaid, according to the tenor and effect of the said bill, and the said indorsements thereon, and his said acceptance thereof as aforesaid.

Averment that the livres are foreign money.

2d Count stating that the defendant accepted, generally, omitting to state, "that when the bill became due it was presented for payment, defendant."

And whereas also the said R. L. on, &c. in parts beyond the seas, at, &c. according to the usage, &c. made, &c. and there directed, &c. and by the said last-mentioned, &c. and which said last-mentioned bill of exchange he the said defendant, afterwards, to wit, on, &c. at, &c. according to the usage, &c. accepted; and the said P. P. B. to whose order, &c. &c. (Add

and that the bankers refused, and that the plaintiffs gave notice thereof to the Verification of usance, Salk. 131: 3. Kxb. 645.

the

the common Counts.) Yet, &c. to the damage of the said plaintiffs of pounds; and therefore they bring suit, &c.: *with this*, that the said plaintiffs will verify, that an *usage*, between Calais aforesaid and London aforesaid, and between Paris aforesaid and London aforesaid, is, and always hath been, thirty days, and no other time whatsoever. F. BULLER.

This declaration was demurred with causes, viz.—To the 1st Count, That the letters P. P. only are prefixed to the name of Brunet, instead of the names they are respectively meant to signify, and ought to have been inserted in words at length. To the 2d Count, that the persons called *Chevalier and Mercier*, are not identified by any christian name or names. To 3d Count, That the names of the persons called A. B. are not sufficiently set forth. 4th, That it is not stated that the said bill of exchange therein mentioned to be shewn and presented at the house of A. B. for their payment thereof, was presented, or to any of them, or to the said defendant, or any servant, &c. 5th, That it is not stated that there was any refusal

of payment of the said bill at the house of the said A. B. 6th, That it is not alleged that the said bill was (a) protested for non payment thereof; whereas by the law and custom of merchants, the said bill of exchange, being a foreign bill of exchange, ought to have been protested, and such protesting ought to have been stated in the Declaration. Judgment for plaintiff.

(a) There is no occasion to state the protest in a declaration on a foreign bill, so as to charge the acceptor; but a declaration is demurrable to where the protest is not stated against the drawer or indorsers.

NEWCASTLE-UPON-TYNE, to wit. G. T. and D. R. complain again J. R. being, &c. for that whereas, at the several times hereafter mentioned, one A. P. the younger, one J. G. the said J. R. and the said G. T. and D. R. were severally residing, trading, and using commerce, that is to say, A. J. G. and the said J. R. at Edinburgh, in that part of Great Britain called Scotland, and the said G. and D. within that part of Great Britain called England, to wit, at Newcastle-upon-Tyne aforesaid; and being so residing, trading, and using commerce respectively as aforesaid, the said A. on the fifth of May 1772, at Edinburgh aforesaid, to wit, at Newcastle-upon-Tyne aforesaid, made his certain bill of exchange in writing, subscribed with his own proper hand, according to the usage and custom of merchants from time immemorial used and approved of, bearing date the same day and year aforesaid, and then and there directed the said bill to the said J. G. by the name and description of Mr. J. G. merchant, Edinburgh, and by the said bill required the said J. G. nine months after date thereof, *to pay to himself the said A. or order*, at F.'s coffee-house there, to wit, at Edinburgh aforesaid, ten pounds sterling, value received; which said bill the said J. G. afterwards, and before the time appointed for payment thereof, to wit, on, &c. to wit, at Edinburgh aforesaid, to wit, at Newcastle-upon-Tyne aforesaid, upon sight thereof accepted, according to the said custom; and the said A. to whom, or to whose order, the payment of the said sum of money in the said bill was to be made, afterwards, and before the payment of the said sum

Declaration by Third Indorsee of a bill of exchange drawn at Edinburgh, against Second Indorsee, for non-payment by Acceptor; with ad Count by Indorsee against Defendant as Drawer, payable to himself or order.

of money contained in the said bill, or any part thereof, and also before the time appointed by the said bill for payment thereof, to wit, on the same day and year aforesaid, at Newcastle-upon-Tyne aforesaid, according to the said usage and custom of merchants, *indorsed* the said bill, his own proper hand being thereunto subscribed; and by that indorsement the said A. appointed the contents of the said bill to be paid to the said J. R. or order, value received, and then and there delivered the said bill, so indorsed, to the said J. R.; and the said J. R. to whom, or to whose order, the payment of the said sum of money in the said bill contained was to be made, afterwards, and before the payment of the said sum of money contained in the said bill, and before the time appointed by the said bill for payment thereof, to wit, on the same day and year aforesaid, at Newcastle-upon-Tyne aforesaid, according to the said usage and custom of merchants, *indorsed* the said bill, his own proper hand being thereunto subscribed; and by that indorsement the said J. R. appointed the said sum of money in the said bill contained to be paid to the said G. and D. and then and there delivered the said bill, so indorsed, to the said G. and D.: and the said G. and D. aver, that when the said sum of money in the said bill mentioned became due and payable, according to the tenor and effect thereof, to wit, on the eighth of February 1773, they the said G. and D. duly *presented* the said bill to the said J. G. at the Forest's coffee-house at Edinburgh aforesaid, for the payment thereof, according to the tenor of the said bill, and then and there requested the said J. G. to pay them the said G. and D. the said sum of money therein mentioned, according to the tenor and effect of the said bill, and of the said acceptance thereof as aforesaid, and the said indorsements so made thereon as aforesaid; but the said J. G. at the time when the said bill was so shewn and presented to him as aforesaid, or at any other time, did not pay to the said G. and D. the said sum of money contained in the said bill, or any part thereof, but then and there wholly refused so to do; of all which said premises the said J. R. on the same day and year last aforesaid, at Newcastle-upon-Tyne aforesaid, had notice from the said G. and D.: and by reason of the premises, and according to the usage, and by the law of merchants, the said J. R. became liable to pay to the said G. and D. the said sum of money in the said bill of exchange contained; and being so liable, he the said J. R. in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, at, &c. *assumpsit*. 2d Count, on another bill of exchange by plaintiffs as indorsees, against defendant as *drawer of a bill payable to himself or order*, on J. T. J. T. refusing payment thereof after acceptance. 3d Count, on another bill, same as last; *common Counts*).

Plea 1st to the above, General issue,

And the said J. R. by T. B. his attorney, comes and defends the wrong and injury, when, &c. and says, that he did not undertake and promise in manner and form as the said G. and D. have above thereof

thereof complained against him; and of this he puts himself upon the country, &c. And for further plea in this behalf, the said J. R. by leave, &c. says, that the said G. and D. (*actio non*, &c.) because he says, that the several causes of action in the said declaration mentioned did not, nor did any of them, *accrue* to the said G. and D. at any time within six years next before the day of exhibiting of the bill of the said G. and D.; and of this, &c. wherefore, &c.

2d, *Actio non accrevit infra sex annos.*

W. BALDWIN.

And the said G. and D. as to the said plea of the said James by him lastly above pleaded in bar, say, that by reason, &c. (*procludi non*) because that the said J. at the time the said several causes of action in the said declaration mentioned accrued, and each of them did accrue, was in foreign parts beyond the seas, to wit, at B. in the kingdom of France, and there lived and resided until the said J. afterwards, to wit, on the fifteenth of December 1780, returned into this kingdom, to wit, at Newcastle-upon-Tyne aforesaid; and that the said G. and D. within six years next after the return of the said J. into England from beyond the seas, to wit, on the eighth of October in the twenty-first year of the reign of our lord the now king, did exhibit their said bill against the said James in due manner and form aforesaid; and this, &c.; therefore they pray judgment, and their damages, by reason of the non-performance of the said promises and undertakings to be adjudged to them, &c.

Replication to ad plea, that after the said causes of action accrued, defendant was in foreign parts *trans mare*, until he returned in 1780; and that plaintiff, within six years after his return, exhibited their bill.

GEO. WOOD.

And the said James says, that the said G. and D. did not, within six years next after the return of the said J. into England from beyond seas exhibit their said bill against the said J. in manner and form as the said G. and D. have above in their said replication alleged; and of this the said J. puts himself upon the country, &c.

Rejoinder, taking issue.

PLEAS before our lord the king at Westminster of the Term of St. Michael, the twenty-sixth year of the reign of our sovereign lord George the Third, by the grace of God of Great Britain, France, and Ireland, king, defender of the faith, and so forth, and in the year of Our Lord 1785.—Roll.

Record in an action on a bill of exchange, Executors of Third Indorsee against Drawer of a foreign bill of exchange, wherein plaintiffs obtained a verdict.

STORMONT AND WAY.

LONDON, ff. Be it remembered, that in the Term of the Holy Trinity last past before our lord the king at Westminster, came Alexander Leekie, Robert Hunter, and James Maude, executors of the last will and testament of Patrick Leekie deceased, by Giles Bleasdale their attorney, and brought into the court of our said lord the king then there their certain bill against John Birmingham, being in the custody of the marshal of the marshal's office of our said lord the king, before the king himself, of a plea of trespass

on

Bill is B. R.

Second bill of
exchange made
at Charles-town
N. A.

Linch indorsed
to Kip.

Kip indorsed to
Alexander Leekie,
one of the
plaintiffs;

who indorsed it
to the said J. P.
Leekie the tes-
tor;

on the case, and there are pledges for the prosecution, to wit, John Doe and Richard Roe; which said bill follows in these words, to wit, London, to wit. Alexander Leekie, Robert Hunter, and James Maude, executors of the last will and testament of Patrick Leekie deceased, complain of John Bermingham, being in the custody of the marshal of the marshalsea of our lord the now king, before the king himself, in a plea of trespass on the case, &c. for that whereas the said John Bermingham, in the lifetime of the said Patrick Leekie, to wit, on the seventh day of March in the year of Our Lord 1782, in parts beyond the seas, to wit, at Charles-town in America, that is to say, at London, in the parish of St. Mary le Bow, in the ward of Cheap, according to the custom of merchants in that respect used and approved of, made and drew his certain bill of exchange in writing, bearing date the day and year aforesaid, upon one John Chambers, and by the said bill then and there required the said John Chambers, at thirty-one days sight of that his second of exchange (first, third, and fourth of the same tenor and date unpaid) to pay one Thomas Linch, in the said bill named, or order, the sum of fifty-eight pounds three shillings and sixpence sterling, value received, and to place the same to account, with or without further advice from him the said John Bermingham, and then and there delivered the said bill to the said Thomas Linch; and the said Thomas Linch, to whom or to whose order the said sum of money in the said bill mentioned was to be paid as aforesaid, afterwards, to wit, in the lifetime of the said Patrick Leekie, and before the payment of the said sum of money in the said bill specified, or of any part thereof, to wit, on the day and year aforesaid, at London aforesaid, in the parish and ward aforesaid, according to the said custom, indorsed the said bill, and by that indorsement appointed the contents of the said bill to be paid to one Isaac Kip, and then and there delivered the said bill, so indorsed, to the said Isaac; and the said Isaac Kip, to whom, or to whose order the said sum of money in the said bill mentioned was, by virtue of the said indorsement, so made thereon as aforesaid, to be paid, afterwards, in the lifetime of the said Patrick Leekie, and before the payment of the said sum of money in the said bill mentioned, or of any part thereof, to wit, on the day and year aforesaid, at London aforesaid, in the parish and ward aforesaid, according to the said custom, indorsed the said bill, and by that indorsement appointed the contents thereof to be paid to the said Alexander, and then and there delivered the said bill, so indorsed, to the said Alexander; and the said Alexander, to whom, or to whose order the said sum of money in the said bill mentioned was, by virtue of the said last mentioned indorsement, to be paid, afterwards, in the lifetime of the said Patrick Leekie, and before the payment of the said sum of money in the said bill mentioned, or of any part thereof, to wit, on the day and year aforesaid, at London aforesaid, in the parish and ward aforesaid, according to the said custom, indorsed the said bill, and by that indorsement appointed the contents of the said bill to

be paid to the order of the said *Patrick Leekie*, and then and there delivered the said bill, so indorsed, to the said *Patrick Leekie*; of which the Drawee had notice. *And the said John Chambers then there had notice. And the said Alexander, Robert, and James, executors as aforesaid, further say, that after the making of the said several indorsements, so made upon the said bill as aforesaid, to wit, on the twelfth day of March in the year of Our Lord 1783, at London aforesaid, in the parish and ward aforesaid, the said Patrick Leekie died, having first duly made his last will and testament, and thereof appointed executors them the said Alexander, Robert, and James, who afterwards duly proved the same, and took upon themselves the execution thereof, to wit, at London aforesaid, in the parish and ward aforesaid. And the said Alexander, Robert, and James aver, that the said bill was afterwards, and after the death of the said Patrick Leekie, and before the payment of the said sum of money therein mentioned, or of any part thereof, to wit, on the ninth day of May in the year of Our Lord 1783, at London aforesaid, in the parish and ward aforesaid, shewn and presented to the said John Chambers for his acceptance thereof, and he the said John Chambers was then and there requested to accept the same; but the said John Chambers did not, nor would then and there accept the said bill; and thereupon the said bill was afterwards, to wit, on the day and year last aforesaid, at London aforesaid, in the parish and ward aforesaid, protested for non-acceptance, according to the said custom. And the said Alexander, Robert, and James, executors as aforesaid, further say, that at the end and expiration of the time appointed for payment of the said bill, to wit, on the twelfth day of June in the year last aforesaid, at London aforesaid, in the parish and ward aforesaid, the said bill was again shewn and presented to the said John Chambers for payment of the money therein mentioned, and he the said John Chambers was then and there required to pay the said sum of money in the said bill mentioned, to them the said Alexander, Robert, and James, as such executors as aforesaid, according to the tenor of the said bill, and the said several indorsements so thereon made as aforesaid; but the said John Chambers did not then and there, or at any other time, pay the said sum of money in the said bill mentioned, or any part thereof, to the said Alexander, Robert, and James, or to any or either of them, but then and there neglected and refused so to do, and therein wholly failed and made default; and thereupon the said Alexander, Robert, and James, to wit, on the day and year last aforesaid, at London aforesaid, in the parish and ward aforesaid, caused the said bill to be duly protested for non-payment thereof; of all which said several premises the said John Bermingham, afterwards, to wit, on the day and year last aforesaid, at London aforesaid, in the parish and ward aforesaid, had notice: by reason whereof, and according to the said custom and by the law of merchants, he the said John*

of which the Drawee had notice.

And plaintiffs aver, that afterwards P. Leekie died, having made his will and appointed them executors, and they proved, &c.

Bill afterwards presented for acceptance, and protested.

Afterwards presented for payment, and protested.

Of all which defendant had notice.

By reason of which said premises, &c. he became liable;

Ber-

and assumpsit
accordingly.

Plaintiffs aver
that the bill was
not indorsed by
their testator nor
by them ;
Nor have the first,
3d, or 4th been
paid.
3d Count.

Birmingham became liable to pay to the said Alexander, Robert, and James, as such executors as aforesaid, the said sum of money in the said bill mentioned, when he the said John Birmingham should be thereto afterwards requested; and being liable, he the said John Birmingham, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at London aforesaid, in the parish and ward aforesaid, undertook and faithfully promised the said Alexander, Robert, and James, as such executors as aforesaid, to pay them the said sum of money in the said bill specified, when he the said John Birmingham should be thereto afterwards requested. And the said Alexander, Robert, and James aver, that the said bill of exchange hath not been indorsed over or negotiated either by the said Patrick Leekie in his lifetime, or by them the said Alexander, Robert, and James, since his death; nor have the said first, third, and fourth bills therein mentioned, or any or either of them, been paid or satisfied. And whereas the said John Birmingham, in the lifetime of the said Patrick Leekie, to wit, on the said seventh day of March in the year 1782 aforesaid, in parts beyond the seas, to wit, at Charles-town aforesaid, that is to say, at London aforesaid, in the parish and ward aforesaid, according to the said custom, made and drew his certain other bill of exchange in writing, bearing date the day and year last aforesaid, upon the said John Chambers, and by the said last mentioned bill he the said John Birmingham required the said John Chambers, at thirty-one days' sight of that his second of exchange, (first, third, and fourth of the same tenor and date unpaid) to pay to the said Thomas Linch, or order, the sum of fifty-eight pounds three shillings and sixpence sterling, value received, and to place the same to account, with or without further advice from the said John Birmingham, and then and there delivered the said last mentioned bill to the said Thomas Linch; and the said Thomas Linch, to whom, or to whose order, the said sum of money in the said last mentioned bill specified was to be paid, afterwards, in the lifetime of the said Patrick Leekie, and before the payment of the said sum of money in the said last mentioned bill specified, or of any part thereof, to wit, on the day and year last aforesaid, at London aforesaid, in the parish and ward aforesaid, according to the said custom, indorsed the said last mentioned bill, and by that indorsement appointed the contents thereof to be paid to the said Isaac Kip, and then and there delivered the said last mentioned bill, so indorsed, to the said Isaac Kip; and the said Isaac Kip, to whom, or to whose order, the said sum of money in the said last mentioned bill specified was, by virtue of the said indorsement, so made thereon as aforesaid, to be paid, afterwards, in the lifetime of the said Patrick Leekie, and before the payment of the said sum of money in the said last mentioned bill specified, or of any part thereof, to wit, on the day and year last aforesaid, at London aforesaid, in the parish and ward aforesaid, indorsed the said last mentioned bill, according to the aforesaid custom, and by

by that indorsement appointed the contents of the said bill to be paid to the said Alexander, and then and there delivered the said last mentioned bill, so indorsed, to the said Alexander; and the said Alexander, to whom, or to whose order, the said sum of money in the said last mentioned bill specified was, by virtue of the said last mentioned indorsement, to be paid, afterwards, in the lifetime of the said Patrick Leekie, and before the payment of the said sum of money in the said last mentioned bill specified, or of any part thereof to wit, on the day and year last aforesaid, at London aforesaid, in the parish and ward aforesaid, according to the said custom, indorsed the said last mentioned bill, and by that indorsement appointed the contents of the said last mentioned bill to be paid to the order of the said Patrick Leekie, and then and there delivered the said last mentioned bill, so indorsed, to the said Patrick Leekie. And the said Alexander, Robert, and James, executors as aforesaid, aver, that after the making of the said several indorsements, so made upon the said last mentioned bill as aforesaid, to wit, at London aforesaid, in the parish and ward aforesaid, due and diligent enquiry was made after the said John Chambers, on whom the said last mentioned bill was so drawn as aforesaid, with intent to shew and present the said bill to him for his acceptance and payment thereof, according to the tenor and effect of the said bill, and the said several indorsements so thereon made as aforesaid; but the said Alexander, Robert, and James, in fact further say, that the said John Chambers was not, upon such enquiry, or at any other time found, or to be found; nor did he then or at any other time pay the said sum of money in the said last mentioned bill specified, or any part thereof, either to the said Patrick Leekie in his lifetime, or to the said Alexander, Robert, and James, executors as aforesaid, or any or either of them, after his death; whereupon they the said Alexander, Robert, and James, as such executors as aforesaid, in due manner and according to the custom of merchants in that respect used, caused the said last mentioned bill to be protested for non-acceptance and non-payment thereof, to wit, at London aforesaid, in the parish and ward aforesaid; *whereof* and of all which said several premises he the said John Bermingham there had due notice: *whereby*, and by reason of which said several premises, and by force of the said custom and by the law of merchants, he the said John Bermingham became liable to pay to the said Alexander, Robert, and James, the said sum of money in the said last mentioned bill specified, when he the said John Bermingham should be thereto afterwards requested; and being so liable, he the said John Bermingham, in consideration thereof, afterwards, to wit, on the said twelfth day of June in the year 1783 aforesaid, at London aforesaid, in the parish and ward aforesaid, undertook and faithfully promised the said Alexander, Robert, and James, as such executors as aforesaid, to pay them the said sum of money in the said last mentioned bill specified, when he the said John Bermingham should

Plaintiffs aver that the Drawee was not to be found, though diligent inquiry was made to present the bill for acceptance and payment, nor has he accepted or paid.

Wherefore plaintiffs caused same to be protested, &c. Whereof defendant had notice,

Averment as
before.

3d Count, same
as first and se-
cond, except as
below.

should be thereto afterwards requested. *And* the said Alexander, Robert, and James aver, that the said last mentioned bill of exchange hath not been indorsed over or negotiated either by the said Patrick Leekie in his lifetime, or by them the said Alexander, Robert, and James, executors as aforesaid, since his death; nor have the said first, third, and fourth bills therein mentioned, or any or either of them, been paid or satisfied. *And whereas* the said John Bermingham, in the lifetime of the said Patrick Leekie, to wit, on the said seventh day of March in the year 1782 aforesaid, in foreign parts, that is to say, at Charles-town aforesaid, to wit, at London aforesaid, in the parish and ward aforesaid, according to the said custom, made and drew his certain other bill of exchange in writing, bearing date the day and year last aforesaid, upon the said John Chambers, by the name and description of John Chambers esquire, Kilboyne, county of Mayo, Ireland, and by the said last-mentioned bill he the said John Bermingham required the said John Chambers, at thirty-one days sight of that his second of exchange (first, third, and fourth of the same tenor and date unpaid) to pay to the said Thomas Linch or order the sum of fifty-eight pounds three shillings and sixpence sterling, value received, and to place the same to account, with or without further advice from the said John Bermingham, and then and there delivered the said last-mentioned bill to the said Thomas Linch; and the said Thomas Linch, to whom or to whose order the said sum of money in the said last-mentioned bill specified was to be paid, afterwards, in the lifetime of the said Patrick Leekie, and before the payment of the said sum of money in said last-mentioned bill specified, or of any part thereof, to wit, on the day and year last aforesaid, at London aforesaid, in the parish and ward aforesaid, according to the said custom, indorsed the said last-mentioned bill, and by that indorsement appointed the contents thereof to be paid to the said Isaac Kip, and then and there delivered the said last-mentioned bill so indorsed to the said Isaac Kip; and the said Isaac Kip, to whom or to whose order the said sum of money in the said last-mentioned bill specified was by virtue of the said indorsement so made thereon as aforesaid to be paid as aforesaid, afterwards, in the lifetime of the said Patrick Leekie, and before the payment of the said sum of money in the said last-mentioned bill specified, or of any part thereof, to wit, on the day and year last aforesaid, at London aforesaid, in the parish and ward aforesaid, indorsed the said last-mentioned bill according to the aforesaid custom, and by that indorsement appointed the contents of the said bill to be paid to the said Alexander, and then and there delivered the said last-mentioned bill so indorsed to the said Alexander; and the said Alexander, to whom or to whose order the said sum of money in the said last-mentioned bill specified was by virtue of the said last-mentioned indorsement to be paid as aforesaid, afterwards, in the lifetime of the said Patrick Leekie, and before the payment of the said sum of money in the said

FOREIGN; BY THIRD INDORSEE.

said last-mentioned bill specified, or of any part thereof, to wit, on the day and year last aforesaid, at London aforesaid, in the parish and ward aforesaid, according to the said custom indorsed the said last-mentioned bill, and by that indorsement appointed the contents of the said last-mentioned bill to be paid to the order of the said Patrick Leekie, and then and there delivered the said last-mentioned bill so indorsed to the said Patrick Leekie. *And the said* Alexander, Robert, and James, executors as aforesaid, in fact further say, that the said last-mentioned bill having been so indorsed as aforesaid, but not as yet accepted, although due diligence had been used for that purpose, they the said Alexander, Robert, and James, as such executors as aforesaid, were after the death of the said Patrick Leekie, to wit, on the sixth day of May in the said year of Our Lord 1783, at London aforesaid, in the parish and ward aforesaid, about and were ready and willing, and then and there offered the said John Bermingham to send over to Ireland for the purpose of shewing and presenting, or endeavouring to shew and present, the said bill to the said John Chambers, according to the tenor and direction of the said last-mentioned bill in that behalf, for acceptance and payment, according to the tenor and effect of the said bill, and would have accordingly presented the same; but the said John Bermingham then and there wholly dispensed with and relinquished the presentment of the said last-mentioned bill to the said John Chambers, and in consideration of the several promises before in this Count mentioned, undertook, and then and there faithfully promised the said Alexander, Robert, and James, as such executors as aforesaid, to pay them the said sum of money in the said last-mentioned bill specified: whereby, and by reason of which said several promises, and according to the custom and law of merchants, he the said John Bermingham became liable to pay to the said Alexander, Robert, and James, as such executors as aforesaid, the said sum of money in the said last-mentioned bill specified; and being so liable, he the said John Bermingham, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at London aforesaid, in the parish and ward aforesaid, undertook and faithfully promised the said Alexander, Robert, and James, as such executors as aforesaid, to pay them the said sum of money in the said last-mentioned bill specified. *And the said* Alexander, Robert, and James, aver, that the said last-mentioned bill of exchange hath not as yet been accepted or paid by the said John Chambers, nor indorsed over or negotiated either by the said Patrick Leekie in his lifetime, or by them the said Alexander, Robert, and James, executors as aforesaid, since his death; nor have the said first, third, and fourth bills therein mentioned, or any or either of them, been paid or satisfied. *And whereas* the said John Bermingham, in the lifetime of the said Patrick Leekie, to wit, on the said seventh day of March in the year 1782 aforesaid, at London aforesaid, in the parish and ward aforesaid, was indebted to the said Patrick Leekie in the sum

Averment that they were about to send to Ireland to present the bill for acceptance and payment, but defendant dispensed with it.

Averment as before.

4th Count, money had and received to the use of testator in his lifetime.

of

ASSUMPSIT GENERAL.—ON BILLS OF EXCHANGE.

5th Count, money had and received for the use of the executors.

6th Count, account stated with the executors.

Common conclusion.

of one hundred pounds of lawful money of Great Britain, for money by the said John Bermingham, before that time had and received to the use of the said Patrick Leekie; and being so indebted, he the said John Bermingham, in consideration thereof, afterwards, in the lifetime of the said Patrick Leekie, to wit, on the day and year last aforesaid, at London aforesaid, in the parish and ward aforesaid, undertook and faithfully promised the said Patrick Leekie to pay him the said last-mentioned sum of money, when he the said John Bermingham should be thereto afterwards requested. *And whereas* the said John Bermingham afterwards, and after the death of the said Patrick Leekie, to wit, on the said twelfth day of June in the year 1783 aforesaid, at London aforesaid, in the parish and ward aforesaid, was indebted to the said Alexander, Robert, and James, as such executors as aforesaid, in other one hundred pounds of like lawful money, for money by the said John Bermingham before that time had and received to the use of the said Alexander, Robert, and James, as such executors as aforesaid; and being so indebted, he the said John Bermingham, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, at London aforesaid, in the parish and ward aforesaid, undertook, and then and there faithfully promised the said Alexander, Robert, and James, as such executors as aforesaid, to pay them the said last-mentioned sum of money, when he the said John Bermingham should be thereto afterwards requested. *And whereas* the said John Bermingham afterwards, and after the death of the said Patrick Leekie, to wit, on the day and year last aforesaid, at London aforesaid, in the parish and ward aforesaid, accounted with the said Alexander, Robert, and James, as such executors as aforesaid, of and concerning divers other sums of money before that time due and owing from the said John Bermingham to the said Alexander, Robert, and James, as such executors as aforesaid, and then being in arrear and unpaid, and upon that accounting he the said John Bermingham was then and there found in arrear to the said Alexander, Robert, and James, as such executors as aforesaid, in another large sum of money, to wit, in the further sum of one hundred pounds of like lawful money; and being so found in arrear, he the said John Bermingham, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, at London aforesaid, in the parish and ward aforesaid, undertook and faithfully promised the said Alexander, Robert, and James, as such executors as aforesaid, to pay them the said last-mentioned sum of money, when he the said John Bermingham should be thereto afterwards requested: *Yet* the said John Bermingham, not regarding his said several promises and undertakings so by him made as aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said Patrick Leekie in his lifetime, and the said Alexander, Robert, and James, executors as aforesaid, since his death, in this behalf, hath not as yet paid the said several sums of money in those promises and undertakings mentioned, or any or either of them, or any part thereof,
either

either to the said Patrick Leekie in his lifetime, or to the said Alexander, Robert, and James, or any or either of them since his death (although the said John Bermingham was requested, as well by the said Patrick Leekie in his lifetime, to wit, on the day and year first abovementioned, as to the said sum of money in the fourth Count mentioned, as by the said Alexander, Robert, and James, since his death, to wit, at London aforesaid, in the parish and ward aforesaid, as to all the said sums of money hereinbefore mentioned); but he to pay the same hath hitherto wholly refused, and still refuses so to do, to the damage of the said Alexander, Robert, and James, as such executors as aforesaid, of one hundred pounds, for which they bring their suit, &c. And they also bring into court here the letters testamentary of the said Patrick Leekie, whereby it appears to the said Court here, that they are executors of his last will and testament, and have executed administration thereof, &c.

Proport of the letters testamentary.

And now at this day, that is to say, on Monday next after the morrow of All Souls in this same Term, until which day the said John Bermingham had leave to imparl to the said bill, and then to answer the same, &c. come as well the said Alexander, Robert, and James, by their said attorney, as the said John Bermingham by Thomas Alexander Pickering his attorney, before our lord the king at Westminster; and the said John Bermingham defends the wrong and injury, when, &c. and says, that he did not undertake or promise in manner and form as the said Alexander, Robert, and James, as executors as aforesaid, have above thereof complained against him; and of this he puts himself upon the country, &c. *Afterward*, and before this day, to wit, on the ninth day of November, in the year of Our Lord 1785, at London aforesaid, in the parish and ward aforesaid, the said Alexander and Robert suggest to the Court here, according to the form of the statute in such case made and provided, that the said James Maude died, and the said Alexander and Robert have survived him, *which* the said John Bermingham doth not deny: *And as* to the said plea of the said John Bermingham, and of which he hath put himself upon the country, they the said Alexander and Robert do the like, &c. therefore let a jury come thereupon before our lord the king at Westminster on Monday next after fifteen days of St. Martin, by whom, &c. and who neither, &c. to recognize, &c. because as well, &c. the same day is given to the said parties at the same place, &c.

Plea.

General Issue.

Suggestion of the death of one of the plaintiffs.

Similar by the survivors.

Before our lord the king at Westminster, of the Term of St. Hilary, in the twenty-sixth year of the reign of our sovereign lord George the Third, by the grace of God of Great Britain, France, and Ireland, king, defender of the faith, &c. and in the year of Our Lord 1786.

London,

Respite of jurors.

London, to wit. The jury between Alexander Leekie and Robert Hunter, surviving executors of the last will and testament of Patrick Leekie deceased, by Giles Bleadle their attorney, plaintiffs, and John Bermingham, defendant, of a plea of trespass on the case, is respited before our lord the king at Westminster, until on Wednesday next after fifteen days from the day of Easter, *unless* the honourable Francis Buller esquire, one of the justices of our lord the king assigned to hold pleas before the king himself, shall first come on Wednesday the fifteenth day of February, at the Guildhall of the said city, according to the form of the statute in such case made and provided, &c. for default of the jurors, because none of them did appear; therefore let the sheriff have the bodies of the said jurors to make the said jury between the parties aforesaid of the plea aforesaid accordingly: the same day is given to the parties aforesaid at the same place.

Posse, in execution of assumpsit, one issue for plaintiff, the other for defendant.

Afterwards, that is to say, on the day and at the place within mentioned, before the honourable Francis Buller esquire, the justice within mentioned, John Way gentleman being associated unto him, according to the form of the statute in such case made and provided, come as well the within named Alexander Leekie and Robert Hunter, surviving executors as aforesaid, as the within named John Bermingham, by their respective attorneys within mentioned, and the jurors of the jury whereof mention is within made, being called, likewise come; who being tried and sworn to speak the truth concerning the matters within contained, say upon their oath, that the said John Bermingham did not undertake or promise in manner and form as in the said *third Count* of the within declaration is complained against him: *but* the said jurors also say, upon their said oath, that the said John Bermingham did undertake and promise in manner and form as in the said several other Counts of the said declaration is complained against him; and they assent the damages of the said Alexander Leekie and Robert Hunter as such surviving executors as aforesaid, on occasion of the promises in those Counts mentioned, to fifty-eight pounds three shillings and sixpence, over and above their costs and charges by them laid out about their suit in this behalf, and for those costs and charges to forty shillings; therefore, &c.

Non assumpsit as third count.

Assumpsit as to the others.

FIFTH INDORSEE.

Fifth Indorsee v. Acceptor of a foreign bill called his first of exchange, payable to the order of third persons, who are partners; with averment, that

MIDDLESEX, *ss.* For that whereas, at the several times hereafter mentioned, the said W. T. F. M. J. G. H. L. Pasquiere, J. D. F. A. Z. and M. Breton, were persons residing, trading, and using commerce, to wit, the said J. G. H. in parts beyond the seas, to wit, at A. in Holland, and the said W. T. F. M. L. P. J. D. F. A. Z. and M. Breton, within this kingdom, to wit, at Westminster, in the county of Middlesex; and plaintiff hath not indorsed the bill. Vide Starkie and Chafman, Carth. 509.

whereas

whereas also, before and at the several times hereafter mentioned, the said L. P. &c. and J. D. were partners and joint dealers together in their said trade and commerce, and the said W. T. L. P. J. D. F. M. J. G. H. F. A. Z. and M. Breton, being so respectively resident and trading, as aforesaid, and the said L. Pasquire, &c. and J. D. being partners as aforesaid, the said J. G. H. heretofore, to wit, on the fifteenth day of December A. D. 1761, in parts beyond the seas, to wit, at A. in Holland aforesaid, that is to say, at, &c. in the county of Middlesex, made his certain bill of exchange in writing, subscribed with his own proper hand, according to the custom of merchants from time immemorial used and approved of; and the said bill, bearing date the day and year aforesaid, directed to the said F. M. by the name of, &c. and by the said bill required him, thirty days after date, to pay that (b) *first of exchange* to (c) *the order of* said L. P. and J. D., by the name of Messrs. P. Son, and Co. the sum of one thousand and eighty-one pounds Dutch currency, at the course of exchange of the day, value received from him the said J. G. H. which he the said Fell would place to the account of him the said J. G. H. according to advice; which said bill of exchange the said F. M. afterwards, and before the payment of the money therein specified, or of any part thereof, and also before the time appointed by the said bill for the payment thereof, to wit, on the day and year aforesaid, at W. aforesaid, upon sight thereof accepted, according to the said custom; and the said L. P. to the order of whom and of the said J. D. P. his partners, the payment of the said sum of money contained in the said bill was to be made, afterwards, and before the payment of the said sum of money contained in the said bill, or of any part thereof, (2) *and also before the time appointed by the said bill for the payment thereof, to wit, on the twenty-fourth day of December in the year aforesaid, indorsed the said bill, his own proper hand being thereto subscribed; and by that indorsement, for himself and partners, appointed the contents of the said bill to be paid to the order of the said F. A. Z. and then and there delivered the said bill, so indorsed, to the said F. A. Z. and the said F. A. Z. to the order of whom the payment, &c. (Then state the other indorsements, till you have brought the bill into the hands of plaintiff, then aver as follows.)* And the said plaintiff (d) *avers*, that he did not, at any time since the making of the said indorsement of the said bill to him as aforesaid, indorse, nor hath he at any time hitherto indorsed over the said bill, nor accepted the contents thereof, to be paid to any person whatsoever; and that the said defendants afterwards, to wit, on the day and year last aforesaid, at, &c. had notice of the said several indorse-

(2) This is unnecessary, and sometimes dangerous, i. Lord Raym. 573.

(b) In an action on a second bill of exchange not necessary to aver that the first and third were not paid. See Carth. 510.

(c) That the bill set out in the declaration is a bill of exchange, vide 1. Salk. 130. and 10. Mod. 286.

(d) This averment is warranted by Bull. Ni. Pri. 273. and is indeed generally inserted, though it should not seem to be absolutely necessary. 10. Mod. 286. 1. Salk. 130.

ASSUMPSIT GENERAL.—ON BILLS OF EXCHANGE,

ments so made on the said bill as aforesaid; by reason, &c. (State liability, and assumpsit to pay, according to tenor and effect of bill, &c.)

C A S E S,
WITH MR. BEARCROFT'S AND MR. SERJEANT ADAIR'S
O P I N I O N S.

In an action by
Indorsee against
Acceptor, after
acceptance he
must prove the
first indorse-
ment.

MESSRS. Hammond and Whitlock are the agents acting on the behalf of a ship in the Baltic trade, of which Mr. Henry Cammell is the master, and who sometimes draws bills on them for small sums of money on account of the ship. There is now in the hands of Mr. Smith, a salesman of wearing apparel in Houndsditch, a bill drawn in the name of Captain Cammel on Messrs. Hammond and Whitlock for twenty pounds, in favour of one Mr. William Green, and accepted by Mr. Hammond, which bill is in the following words and figures:

£. 20.

Cronstadt, August 9, 1786.

Two months after date, please to pay to Mr. William Green, or order, the sum of twenty pounds for value received, and place the same to the account of your humble servant,

*Henry Cammell, at Sir James Esdaile and Co.
William Hammond.*

*To Messrs. Hammond and
Whitlock, No. 17, Crutched
Friars, London.*

*Indorsed William Green.
Thomas Hudson.
James Mills.*

When the above bill was tendered to Mr. Smith, he sent it to the banker's, directed by the acceptance, to know if it was a good bill, and was there answered that it was.

(3) See Devallar
v. Herring, 9
Mod. 44. and
Bailey on Bills,
sec. p. 15.

Before this bill became due, it was discovered by Messrs. Hammond and Whitlock that it had been (3) *forged* with another bill for one hundred pounds, by a man of the name of A. B. who was taken into custody by them, and confined in Yarmouth gaol, from whence he lately made his escape into Holland. The name Henry Cammell put as the drawer is *not* of the hand-writing of Captain Cammell, although an imitation of it; and there is *no such person as William Green*, the person appearing to be the payee, and the indorsement of his name is supposed to be made by the forger of the bill. The names of the indorsers, Hudson and Mills, are also *fictitious names*, to give the bill a mercantile appearance. When the bill became due, it was presented for payment by Mr. Smith (who is said to have received it from the person committing the forgery in payment for a quantity of wearing apparel purchased of him); but Mr. H. was advised that he was not compelled by law to pay it, by reason that the *indorsement of Green the payee could not be proved, there being no such person in existence*. On Mr. H.'s part it was contended, that even supposing he could not avail himself of the forgery of the drawer's name, so as to avoid payment of the bill, yet the acceptance amounted only to an engagement to pay the money to Mr. Green *or order*; and no interest could be transferred to any other person but by the real and actual indorsement of William Green, which could not hap-
pen

pen in this case, he being a fictitious person; but here there is no order by William Green for transferring the right of action to Mr. Smith the holder of the bill, inasmuch as there is no real indorsement thereon; and therefore that he cannot put himself into a situation capable of recovering the money. On the other hand Mr. Smith contends, that he received the bill fairly, and in the usual course of trade, and took the usual precautions against forgeries, and that Mr. Hammond the acceptor cannot take the advantage of his inability to prove the hand-writing of William Green the first indorser, but must pay the money. To save expence it is agreed, that both parties shall be governed by your opinion. Whether, under all the circumstances before stated, Mr. Hammond, as the acceptor of the bill in question, can be compelled by law to pay the amount to Mr. Smith?

I Am clearly of opinion that, in the case stated, Mr. Hammond, the acceptor of this bill, cannot be compelled by law to pay the amount. His acceptance admits the hand of the drawer, but nothing more; the indorsee must derive his title through the original payee and first indor-

ser, which cannot be done here since none such exists. Smith and Hammond are both equally innocent; therefore the loss must rest, as between them, where it now stands, which, under the circumstances stated, is upon Smith.

EDW. BEARCROFT.

C A S E.

FIRST, A. a merchant resident in foreign parts, draws a bill at three months sight on B. and payable to C. both resident in London. The said bill is accepted by B. and delivered over to C. whose property it is. C. afterwards gives the said bill in trust to B. who, while it is in his possession, secretes himself from his creditors, and afterwards becomes a bankrupt; but prior to the docket being struck against B. C. goes to B. and claims the bill as his property, which B. immediately delivers up to him.

Question.—Whether the said bill is actually the property of C. at the time above mentioned, although then in the possession of B. but in trust? Or whether it becomes a part of the estate of B. to which his creditors have a legal claim to their dividend upon? Or, if the creditors can have no just claim, whether, on C. paying the said bill away to D. its being regularly presented when due to B. for payment, and being noted for non-payment, has not D. a just right to protest the bill and return it back to A. who is the drawer, and to use coercive measures to enforce the payment?

The nature of the trust upon which the bill was put into the hands of B. the acceptor, is not stated; but if he held it merely in trust, and without any claim of beneficial interest in it, I am of opinion that it remains the property of C. and that the creditors of B. have no claim whatever upon it. On the contrary, it

may be proved as a debt under the commission, and C. would be entitled to a proportionate dividend with the other creditors. The holder of the bill should present it for payment to B. when due, and have it regularly protested, after which he will have a clear right to recover the amount against A. the drawer.

ASSUMPSIT GENERAL.—ON PROMISSORY NOTES.

SECOND, C. has accepted two bills to the amount of five hundred pounds and upwards, for which he never received the least value for doing the same, merely out of friendship to B. to serve his credit until his remittances came round. B. takes the said bills to D. (a banker) in order to get them discounted, which D. refuses, but agrees to advance one hundred and fifty pounds to B. on account of them. Soon after which B. commits an act of bankruptcy by secreting himself; but before the docket is struck against B. C. applies to D. to enquire of him what sum was lent to B. on account of the bills; and upon being informed, C. tells D. he wishes to pay him the one hundred and fifty pounds B. has had advanced him upon the bills, if he will deliver them up to him on his so doing.

Question — Will D. be safe in delivering up the bills in question to C. or whether it will be requisite for B. to appear with C. at the house of D. and there to personally deliver the bills over to C. as his property in the presence of D. who might then pay D. the one hundred and fifty pounds he had advanced thereon? Or what other mode can be devised in order to secure C. and D. from farther trouble?

This point, though the justice of the case is perfectly clear, is attended with some difficulty, and it seems doubtful whether D. having full notice of the bankruptcy, can deliver up the bills in question to C. or even to B. himself, without being subject to an action of trover from the assignees of B. if they should tender the one hundred and fifty pounds, and demand the bills; for though I am of opinion that B. or his assignees could not recover either in law or equity the amount of these bills against C. if it can be clearly proved that they were accepted merely for accommodation, and without any valuable consideration, yet I doubt whether D. can take upon himself to decide between them, and he would certainly do it at his own risk. If the bills are over due, then I think C. need have no apprehension, from their falling into the hands of the assignees. But if the bills are not yet due, and the assignees getting the possession of them from the banker (which, on tender of the one hundred and fifty pounds, I think he could not refuse) should be dishonest enough to pay them away for a valuable

consideration to persons who had no notice of their being mere accommodation bills; C. could then make no defence against such holders of the bills.

If the assignees are fair men, I should think, on being informed of the true circumstances of the case, they would consent to the delivery of the bills to C. But if they will not, I think the most secure way for all the parties will be, for C. to file a bill of equity against B. D. and the assignees of B. praying that the bills may be delivered up, on payment of the sum of one hundred and fifty pounds due to D. and that he C. may come in as a creditor to that amount upon the estate of B. which I should think might be done at no very large expence, as a very short bill would be sufficient. But if there is no apprehension of the assignees getting possession of the bills and paying them away before due, it will be most prudent for C. to lie by, as I am clearly of opinion, that the amount of the bills can never be recovered against him by any person who has notice that they were accepted without consideration.

J. ADAMS.

ON PROMISSORY NOTES.

*Payee v. Maker
of a promissory
note.*

MIDDLESEX, ss. A. B. complains of C. D. being, &c. in a plea of trespass on the case, &c. for that whereas the said defendant

defendant heretofore, to wit, on (a) the seventh (b) day of October, A. D. 1790, to wit, at (c) Westminster, in the said county of Middlesex, made and signed (d) his certain note in writing, commonly called a promissory note, bearing date the day and year aforesaid (e), and (f) thereby promised (g) to pay to the said (1) Barr. 325. plaintiff, by the name of Mr. A. B. or order, four months after the date of the said note, the sum of ten pounds ten shillings for value received by him the said defendant, and then and there delivered (g) the said note to the said plaintiff; whereby, and by reason of which said several premises, and by force of the statute in such case made and provided, the said defendant became liable to pay to the said plaintiff the said sum of money in the said note specified, according to the tenor and effect of the said note (h); and being so liable, he the said defendant, in consideration thereof, afterwards, to wit, on the same day and year aforesaid, at (i) Westminster

7th Nov.
c. 9.

(a) It was formerly the practice (and indeed we now frequently meet with it) to allege the note to be made *after the first day of May 1705* (the day mentioned in statute 3. and 4. Anne, c. 9. which gives the action on promissory notes); but as the note itself appears to be made subsequent to it, there is no necessity to take notice of it; though it may be otherwise in cases where the day set forth is material. In that case, as the statute speaks of a thing as arising after a particular day, so it should be otherwise shewn than under a *salicet*, or by an allegation that is not material. In short, it should be positively alleged to have so happened, in order to bring the case within the statute.

(b) *The day is material* in this case, as it defines the contract on which the action is brought. 1. Stra. 22.

(c) *The place is not material* in an action upon an inland note, nor do I conceive it to be so in the case of a *foreign* one; though it is otherwise with bills of exchange, which are governed by local customs as well as positive statutes; yet it is usual, where a note is made abroad, and so appears upon the face of it, to allege it to have been made in parts beyond the seas, that is to say, at *Jamaica*, in the *West Indies*, to wit, at Westminster (the usual venue).

(d) This is the word made use of in the statute of Anne; and it seems to have the preference of the usual word *subscribed*, inasmuch as it is equally applicable to a signature by a mark as to a written one. According to one decision (2. Lord Raym. 1484.), however, neither one expression nor the other is absolutely necessary, both being included in the word *made*. Vide also 2. Lord Paym. 1377. and 1542. Str. 609.

(e) If the note have no date, you will omit this allegation of course. 2. Show. 442.

(f) Be careful to recite the note accurately, as a variance will be fatal. You need not, however, recite it literally, as in the case of bad spelling and such like inaccuracies.

(g) This seems to be a material allegation, as the bare making of a note, without delivering it, seems of no avail; yet the want of the averment may be merely an informality, and of course the subject of a special demurrer, and incapable of being taken advantage of in any other way. It also seems to be more formal to state the *delivery* of the note after the recital of it than *before*, and then go on and say, that by reason of the several premises (of which the *delivery* is one) and by force of the statute, &c. the defendant became liable.

(h) This will ever be the case where the action is between the *original parties* to the note; but where it is brought against an *indorser* or other *collateral party*, in consequence of the drawer's default at the end of the time appointed for payment of the note, there the obligation of payment on such indorser or third person is *immediate and direct*, of, in legal language, *upon request*, and not according to the tenor of, or in any manner dependent upon, the note or instrument.

(i) As the promise is a transitory matter, we make no difference in the *place* *here*, though the note be a *foreign* one. In the beginning of the declaration, the place where the note was really made is set out as descriptive of the instrument, but here it is only applied to the promise, which, being transitory, requires no specific description.

(2) 12. Mod.

380.

Grant v. Vang-
had, Burr. 1516.

(3) B. R. E.

18. Geo. 3.

Pekham v.

Wood; Bl. 445. Bailey on Bills and Notes, 48. 17. Morrison v Lee, B. R. H. 26. Geo. III. Com. 43. 1 T. R. 40. 2. T. R. 71. Atk. 182. Bull. N. Pri. ed. 1790, 274. Str. 1155. Doug. 708. Consideration illegal, Burr. 1077. 5. Geo. II. 30. f. 11. 9. Ann. c. 14. f. 1. 12. Ann. st. 2. c. 16. Anon. B. R. H. 26. Geo. III. But an action will lie for the money lent (see Bailey on Bills and Notes, 70.), though the consideration may be money lent and lost at play.

(2) As this assumpsit is merely an assumpsit by implication of law, out of the preceding matter, which is an *express* assumpsit in itself, so the want of it may be immaterial *after a verdict*, though perhaps bad, upon a *special demurrer*. It is so in the case of bills of exchange (Carth. 510. Lord Raym. 574. 1. Salk. 329.); and of course is so in that of promissory notes, which are clearly *express* promises in themselves. And in the case of Gregory v. Walcup, it was held, that

in an action against the *acceptor* of a bill of exchange, it was not necessary to allege a promise of payment, as the acceptance is an actual assumption, and the declaration need not allege more. Comyns's Rep. 75. pl. 49.

(1) The assumpsit must of course be governed by the same rules as the obligation that raised it, and of consequence must be co extensive and commensurate with it. Bailey on Bills and Notes, 62. Str. 224.

Payee against
the Executor of
Maker.

FOR that whereas the said *W. Layton* (defendant's testator) in his life-time, to wit, on the twenty-third day of August, A. D. 1735, at Westminster, in the county aforesaid, made and signed his certain note in writing, commonly called, &c. bearing date, &c. and thereby promised to pay to the said, &c. by the name of, &c. [see last Precedent], and then and there delivered, &c.; whereby, and by reason of which several premises, and by force of the statute, &c. the said *W. L.* in his lifetime became liable to pay, &c. according, &c.; and being so liable, he the said *W. L.* in consideration thereof, afterwards, in his lifetime, to wit, on, &c. at, &c. undertook, &c. And whereas the said *W. Layton* afterwards, in his lifetime, to wit, on, &c. (same day after the note became due, so as it be before the death of defendant's testator.) (Add the Counts spoken of at the end of the preceding Precedent, with the following conclusion.) Yet the said *W. Layton* (defendant's testator) in his lifetime, and the said defendant after his death, not regarding the said several promises and undertakings of the said *W. Layton*, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said plaintiff in this behalf, hath not, nor hath either of them, paid the said several sums of money in those promises and undertakings mentioned, or any of either of them, or any part thereof, to the said plaintiff, although so

Common con-
clusion "in as-
sumpsit to a
declaration a-
gainst an execu-
tor of maker of
a promissory
note.

to do the said *William Layton* in his *lifetime*, to wit, on the day and year last aforesaid, and often afterwards, and the said defendant *after the death* of the said *W. Layton*, to wit, on the day of , A. D. , (any day after the death of defendant's testator, and before the bringing of the action) and often both before and afterwards, were respectively requested by the said plaintiff, to wit, at, &c. aforesaid, in the county aforesaid; but they, or either of them, to pay the same, or any part thereof, have, and each of them hath, wholly refused and neglected, and the said defendant still refuses to pay the same to the said plaintiff, to the damage of him the said plaintiff of fifty pounds; and therefore he brings his suit, &c.

FOR that whereas the said defendant, in the lifetime of the said *A.* (plaintiff's testator), to wit, on, &c. made, &c. (as in the last Precedent, only substituting the *plaintiff's* testator for *defendant's*) and whereas the said defendant afterwards, in the lifetime of the said *A.* (plaintiff's testator), to wit, on, &c. (any day after the note became due, so as it be in the lifetime of plaintiff's testator), [the same Counts as in the last Precedent, with the following conclusion.] Yet the said defendant, not regarding, &c. but contriving, &c. craftily and subtilly to deceive, &c. the said *A.* (plaintiff's testator) *in his lifetime*, and the said plaintiff, *executor* as aforesaid, *since his death*, hath not paid the said several sums of money in those promises and undertakings mentioned, or any or either of them, or any part thereof, either to the said *A.* (plaintiff's testator) in his lifetime, or to the said plaintiff since his death, although so to do he the said defendant was requested by the said *A.* (plaintiff's testator) *in his lifetime*, to wit, on the day and year last aforesaid, and often afterwards, and by the said plaintiff as such *executor* as aforesaid *since the death* of the said *A.* (plaintiff's testator), to wit, on, &c. (any day after death of plaintiff's testator, and before bringing the action), and often both before and afterwards, to wit, at, &c. aforesaid; but he to pay the same, or any part thereof, hath always hitherto wholly refused and neglected, and he doth still refuse, to pay the same to the said plaintiff as such *executor* as aforesaid, to the damage of the said plaintiff, as such *executor* as aforesaid, of pounds; and therefore he brings his suit, &c.: and he also brings into court here the letters testamentary of the said *A.* (plaintiff's testator), whereby it fully appears that the said plaintiff is *executor* of the last will and testament of the said *A.* and hath administration thereof, &c.

Executor of
Payee against
the Maker.

Common conclusion to a declaration in assumpsit at suit of an Executor.

FOR that whereas the said *J. and T.* (the defendants and makers), at the several and respective times hereafter mentioned, *Payees, partners,*
against Makers,
partners, upon
a note made by one of them, with directions as to declaration on note made by both.

ASSUMPSIT GENERAL.—ON PROMISSORY NOTES.

were (a) partners and joint dealers together in trade and commerce, to wit, at, &c. in, &c. and the said J. and T. being such partners and joint dealers together, the said J. on, &c. at, &c. afore said, for (b) himself and the said T. his partner, made and signed a (c) certain note in writing, commonly called, &c. bearing date, &c. and thereby, for (b) himself and his said partner, promised to pay to the said W. and M. or their order, &c. &c. and then and there, for (b) himself and his afore said partner, delivered the said note, &c.; whereby, and by reason of which said several premises, and by force of the statute, the said J. and T. became liable to pay, &c.; and being so liable, they the said J. and T. in consideration thereof, afterwards, to wit, on, &c. at, &c. undertook, &c.

(a) Where the note (like that in question) is given by one partner only for himself and his companion, there it seems proper to state a partnership, as in the precedent before us, in order to render it obligatory on the non subscribing partner. But where it is signed by all the partners in a house, or by all who are intended to be bound by it, it may be unnecessary to state anything like a general partnership in the course of trade, as, whether it exist or not, the parties are bound by their signature, independent of any other circumstance. So, for a similar reason, it may be unnecessary to state a partnership in the *Payer*, where a note is payable to them all by name :

but where it is payable to only one of them and *Co.* there it perhaps may be necessary to aver the fact of a partnership, as it is from that circumstance coupled with the note or contract, and not from the note simply, that any but he who is immediately named derives any interest in the instrument.

(b) This and the similar allegations are material. Vide Lord Raym. 1484.

(c) As the note in question is neither the contract of one alone, nor the immediate act of both the drawers, so it seems better to describe it as a note generally, than as the specific act or contract of either one or both of the parties to be bound by it.

Payer against
one *Maker* (b),
upon a joint and
several note,
¶ "his."

FOR that whereas the said defendant and one J. B. (a), on, &c. at, &c. made and signed *their* certain note in writing, commonly called, &c. bearing date, &c. and thereby jointly and severally promised to pay, &c. and then and there delivered, &c.; whereby, &c. the said defendant became liable, &c.; and being so liable, he the said defendant, in consideration, &c. (Assumpsit accordingly.) And whereas, &c. (Add another Count as upon a note by defendant alone, &c. by leaving out what is in italic, and inserting the word in the margin.)

(a) If three make a note (a) jointly and severally, you may not declare against two of them jointly, the third living, but you may against all three jointly, or against each of them separately: so determined by Lord Mansfield, in the case of Turnbull, at Sittings' Guildhall, about the year 1777.

(b) This is the usual way of declaring on a joint and several note, though we seldom use more than the second Count, which is sufficient, and indeed seems the better Count of the two, as the plaintiff

will have less to prove under it, having the subscription of one of the drawers only to establish, instead of that of both; and when the note is in the dispute, it is the proper Count, as appears from the following cases: Ovington and Neale, Stra. 819. and Lord Raym. 1544. On error, in B. R. a judgment in favour of plaintiff was reversed for want of the plaintiff's shewing a title to bring a separate action against one of the makers of a note, by two *conjunctim aut separatim*; for by the present declaration he only says,

(c) Cowp. 832. Burr. 2614. Burr. 323.

he has this or some other cause of action, and the note does not import they promised severally; for the note set out is, that they promised jointly or severally, which is not positive that they promised severally, for it ought to have been, that they promised jointly and severally. In *Str.* 76. *Butler and Maliffy*, on a similar note as in the preceding case, on demurrer, it was insisted for defendant, that the action should have been brought against *both*. Et per *Parker, C. J.* The plaintiff might have brought it against *either* or *both*, for he had his election: if the action had been against *both*, he should have declared as he now does; but that is not right in the action against one only, for he should have de-

clared generally, that this defendant, by his note, promised to pay; and a several note by two would have been good evidence. Suppose the note had been for fifty pounds or one hundred pounds, the plaintiff is entitled to either, but uncertain which till he has made his election; for he that speaks in the *disjunctive*, says true, if *either member* of the disjunctive be verified (*b*); whereas he who speaks in the affirmative affirms *both* parts to be true. In the case of *Rees and Abbot*, *Cowp.* 332. (*c*), the court of B. R. held, that *jointly* or *severally*, and *jointly AND severally*, were synonymous, and that the election whether the note shall be joint or several is in the person to whom it is payable.

(b) *Bailey on Bills and Notes*, 56. (c) *Str.* 76.

FOR that whereas the said defendant, before and at the time of the making of the note hereinafter mentioned, and afterwards, was a goldsmith (*a*), and a trader in that business, and one R. W. was, for and during all that time, a (1) servant of the said defendant in his said business, and usually entrusted by him to sign such notes, to wit, at, &c. aforesaid; and the said defendant being such goldsmith and trader as aforesaid, and the said R. W. being such servant to him as aforesaid, and so entrusted as aforesaid, he the said R. W. on, &c. at, &c. as such servant of the said defendant as aforesaid, and for him the said defendant made and signed a certain note in writing, commonly called, &c. bearing date, &c. and thereby as such servant of the said defendant as aforesaid, and for him the said defendant, promised to pay, &c.; and then and there, as such servant to the said defendant as aforesaid, and for him the said defendant, delivered, &c.; whereof (*b*) the said defendant afterwards, to wit, on the day and year aforesaid, at, &c. aforesaid, had notice: whereby, and by reason, &c. and by force of the sta-

Payer against *Goldsmith* or *Banker, &c.* on a note drawn by his (1) *Clerk* or *Servant*.

(1) *Lord Raym.* 175, 1484. *Doug.* 630. 12. *Mod.* 564. *Comb.* 450. 12. *Mod.* 346. *Mod.* 110.

(a) As the notes of these sort of traders are generally made by their clerks, so the Legislature has had an eye to them in particular, as well as to notes made by the persons who are to pay them; and it is upon this ground that the declaration is varied from one upon a note made by the servant of a person not a trader; the unusual averments arise out of the stat. (a) which *vide*.

(b) In the old declarations on notes like that in question, there is an averment of the note's being presented for payment; but as there can be no more necessity for an averment of that kind here than in the case of an ordinary note,

so it may be omitted; and indeed it is imprudent to have it in, lest it should burthen plaintiff with proof. Yet as the note is not the immediate act of the person who is to pay it, so it is perhaps necessary to bring the facts within his knowledge by the common averment of his having notice of them. This answers all the end of the averment of the note's being presented, and being an averment of a fact, not springing from plaintiff himself, but deducible from all the circumstances of the case, may be taken by presumption from those circumstances, without burthening the plaintiff with any positive evidence of the fact itself.

(a) 3. and 4. *Ann.* c. 9.

(note)

tute, &c. the said defendant became liable, &c. and being so liable, &c. he the said defendant, in consideration, &c. undertook, &c. (c)

(c) It seems usual to add a Count upon a note as made by defendant himself; but it is difficult to conceive either the necessity or utility of such a Count; and indeed it should seem improper, as notes like the one in question seem to stand upon their own circumstances, and so to be treated of in the statute as distinct from notes made by the party who is to be charged by them: however, it may be inserted out of caution, lest the custom should be inaccurately stated.

Besides the difference between this declaration and the ancient form in the respect alluded to in the preceding note (b), it varies from it in this: According to the ancient form, the action seems founded on a case rather than an act of parliament, as the case really is, (vide the next Precedent). That such a custom is good, and does in fact exist, is undeniable; but whether it does or does not seem perfectly immaterial, as the stat. of Anne expressly gives an action upon the note independent of any custom whatsoever; of course therefore it follows, that nothing more be stated than the facts of defendant's being *one of the traders* mentioned in the act, and that

the drawer of the note was a *servant* of the description there spoken of. How the declaring upon a custom first obtained, is rather difficult to determine; but from all we can collect, it is likely to be as follows: Before the stat. of Anne, when no action could be maintained upon the note itself, as such merchants and pleaders used every endeavour to put them upon the same footing as bills of exchange; with the former they were always considered as such, and the latter attempted to declare upon them accordingly, and, in analogy to declarations upon bills, had recourse to the custom of merchants in their pleadings; but this was soon over-ruled, as will be seen on bills of exchange, and the stat. of Anne made to remedy the inconvenience. The practice of declaring upon them as under a custom, however, having once obtained, it is probable that it continued even after the statute: and this idea seems confirmed in the circumstance of no notice being taken of the statute in the *old declarations*; nor indeed does it appear by those declarations, but the cause of action arose before such statute.

Payee against a Goldsmith on a note drawn by the (1) Servant, alleging the custom of London to make such Goldsmith liable for the acts of his servant.

(1) See cases, last Precedent.

LONDON, ff. That whereas the city of London now is and from time immemorial hath been an ancient city; and whereas within the said city there is and from time immemorial there hath been this custom, used and approved of, to wit, that if any *servant* of any *goldsmith*, or of any other person in the said city trading and using commerce in receiving and paying money, employed and entrusted by such his master in keeping and writing of books and bills or notes concerning such receipts and payments, should make any *bill or note subscribed with the proper hand and name of such servant*, and by such his bill or note promise to pay for such his master, to any other person on such bill or note named, or *bearer on demand*, any sum of money in such bill or note mentioned, then such master of such servant so making and subscribing such bill or note, from time immemorial hath been liable, and hath been accustomed to be liable, to the payment of such sum of money mentioned in such bill or note, to such person named in such bill or note as was so promised or expressed to be paid on demand, according to the tenor of such bill or note, to wit, at London aforesaid, in the parish of, &c. in the ward of, &c. And whereas

whereas the said defendant, at the time of the making of the note hereinafter mentioned, to wit, on, &c. at, &c. aforesaid, was a goldsmith, and a trader in that business, and a person there trading and using commerce in the receiving and paying of money; and on the same day and year, and long before and afterwards, one Richard Wood was the servant of the said defendant, and was by him employed and entrusted in the keeping and writing of books and bills or notes concerning such receipts and payments; and the said R. W. so being the servant of the said defendant as aforesaid, and so being employed and entrusted as aforesaid, he the said R. W. on the said nineteenth of September in the year aforesaid, at, &c. aforesaid, according to the said custom, made a certain note in writing, bearing date the same day and year, subscribed with the proper hand and name of the said R. W. and by that note the said R. W. promised to pay to the said plaintiff, by the name, &c. of, &c. or bearer, on demand, two hundred and thirty pounds for the said defendant (then being his master as aforesaid); whereby the said defendant, according to the said custom, became liable to pay to the said plaintiff on demand the said two hundred and thirty pounds mentioned in the said note, according to the tenor of the said note, and according to the said custom; and being so liable, the said defendant, in consideration, &c. undertook, &c. and although the said plaintiff afterwards, to wit, on, &c. at, &c. aforesaid, shewed and presented the said note so made by the said R. W. as aforesaid to the said defendant, and demanded the payment of the said sum of two hundred and thirty pounds therein specified of the said defendant, yet the said defendant, not regarding, &c. (common conclusion. Then add a Count for two hundred and thirty pounds, as if the said note had been made by defendant himself; money lent; money had and received; and common conclusion to three last Counts.)

MIDDLESEX, ff. T. W. administratrix, &c. of S. T. deceased, with the last will and testament of S. T. annexed, against J. L. for that whereas before and at the time of the making of the promises and undertakings hereafter mentioned, and afterwards, the said defendant and one M. C. now deceased, and whom the said defendant hath survived, were partners and joint dealers together in trade and commerce, to wit, at, &c. and the said defendant and M. C. being such partners and joint dealers together, the said defendant, in the lifetime of the said M. C. and also in the lifetime of the said S. T. (plaintiff's testator,) to wit, on, &c. at, &c. aforesaid, for himself and the said M. C. his said partner, made and signed a certain note (&c. as in declaration ante, fo. 343. Payees, &c. against Drawers, partners, on note made by one of them, till you have stated the delivery of the note, then proceed as follows): whereby, and by reason, &c. and by force of the statute, &c. the said defendant and M. C. in the lifetime of the said M. C. and also in the lifetime of the said S. T. (plaintiff's testator,)

*Administratrix
cum testamento
annexo of Payee
against a sur-
viving Partner,
maker.*

Conclusion in assumpsit at suit of Administratrix against a surviving Partner.

tor,) became liable to pay to the said S. T. the said sum of money in the said note specified, according to the tenor and effect of the said note; and being so liable, they the said defendant and M. C. in the respective lifetimes of the said M. C. and S. T. to wit, on, &c. at, &c. undertook, &c. And whereas, &c. (the usual common Counts, and the following conclusion): Yet the said defendant and M. C. (deceased partner,) in the lifetime of the said M. C. and the said defendant, after his decease, not regarding, &c. but contriving, &c. to deceive and defraud the said S. T. (plaintiff's testator,) and the said plaintiff, to whom administration of all and singular the goods and chattels, rights and credits, which were of the said S. T. deceased, at the time of his death, with the will of the said S. T. after the death of the said S. T. to wit, on, &c. at, &c. was by, &c. in due form of law committed,) after his death, in this behalf have not, nor hath either of them, paid the said several sums of money in such promises and undertakings mentioned, or any or either of them, or any part thereof, either to the said S. T. in his lifetime, or to the said plaintiff, administratrix as aforesaid, since his death, although (a) to pay the same the said defendant and M. C. were requested by the said S. T. in the lifetime of the said S. T. and also in the lifetime of the said M. C. to wit, on the aforesaid day of in the year aforesaid, and often afterwards, as was the said defendant by the said S. T. in his lifetime, and by the said plaintiff, administratrix as aforesaid, after the death of the said S. T. and after the death of the said M. C. to wit, at Westminster aforesaid); but they the said defendant and M. C. to pay the same have, and each of them hath, always wholly refused, and the said defendant still refuses to pay the same to the said plaintiff, administratrix as aforesaid, to the damage of the said plaintiff, as such administratrix as aforesaid, of
 1. suit, &c. And she also brings into court here the letters of administration of the said S. T. bearing date the day and year in that behalf above mentioned, with the will of the said S. T. annexed, which sufficiently testify to the Court here the granting the administration aforesaid to the said plaintiff.

(a) The facts of this averment cannot be material, though it is usual to make it agreeable to the real circumstances of the case if they are known. This aver-

ment is drawn upon the idea of defendant's partner having died before plaintiff's testator.

Declaration by LONDON, to wit. J. H. esquire, administrator, &c. of M. B. esquire, deceased, limited until the original last will and testament of the said deceased, or an attested copy thereof, should be brought into and left in the registry of the court of the Archbishop of Canterbury, Primate of all England, and metropolitan, and letters of administration to the will annexed, of
 of Payee of a note of hand, Carolina currency, against *Mater* for non payment.

all

all and singular the goods and chattels and credits of the deceased should be applied for and granted by the said court, but no further or otherwise, or in any other manner; complains of Sir J. W. bart. being, &c. for that whereas the said Sir J. after the first day of May, which was in the year of Our Lord 1705, that is to say, on the seventh of December 1774, at Savannah in Georgia, that is to say, at London, &c. made his certain note in writing, commonly called a promissory note, his own proper hand being there-to subscribed, bearing date the same day and year last aforesaid, and then and there delivered the said note to the said M. in his lifetime; and by the same note then and there faithfully promised to pay to the said M. in his lifetime by the name of, &c. or order, on or before the first of February next following the date of the said note, eight thousand eight hundred and two pounds five shillings South Carolina currency, with interest from the date thereof, for value received; by reason whereof, and by force of the statute in such case made and provided, the said Sir J. became liable to pay to the said M. in his lifetime the said sum of money mentioned in the said note, according to the tenor and effect of the said note; and being so liable, (assumpsit, &c.) And the said J. N. avers, that the said eight thousand eight hundred and two pounds five shillings South Carolina currency, at the time of making the said note, was and from thence hitherto hath been, and still is, of the value of, &c. to wit, at, &c. (Goods sold, &c. Another Count on the note, and presentment after it became due, &c.) Yet the said defendant, not regarding, &c. to the said Joseph, after the death of the said M. to which said J. administration of all and singular the goods, chattels, and credits which were of the said M. at the time of his death, limited until the original will, &c. to the damage, &c. : with this, that the said J. will verify that the original last will and testament of the said deceased, or an authentick or other copy thereof, hath not yet been brought into or left in the registry of the court of the archbishop, and letters of administration with the same annexed of all and singular the goods, chattels, and credits of the said deceased been applied for or granted by the same court, and the said letters of administration are now in full force and effect.

*Payer against
Drawee.*

GEO. WOOD.

WHEREAS, &c. (State all the circumstances of the note, with the liability and assumpsit to pay as the case shall require; then insert the following averment and conclusion): And the said plaintiff avers, that although the said defendant hath paid a part of the money mentioned in the aforesaid note, that is to say, the sum of, &c. to the said plaintiff, to wit, at, &c. aforesaid; yet the said

*Declaration as
against the Mak-
er, where part of
the money has been
paid (a).*

(a) The only part of this Precedent that was worth preserving is the averment and conclusion, though they are seldom or never used; the practice being to take no notice of a payment in part, it

coming properly from the other side; and the breach of the Assumpsit on which the action is brought being of such a nature as not to require proof in toto, but of any part merely.

de-

ASSUMPSIT GENERAL.—ON PROMISSORY NOTES,

defendant, not regarding, &c. but contriving, &c. hath not as yet paid the residue of the said sum in the said note specified, or any part thereof, to him the said plaintiff, (although so to do the said defendant was requested by the said plaintiff, as well at the end of the time appointed for the payment of the money in the said note specified; to wit, on the (b) day of in the year aforesaid, as afterwards, to wit, at, &c. aforesaid,) but, &c. hath hitherto wholly refused and neglected, and still refuses so to do, to wit, at, &c. aforesaid.

(b) Day of payment, including days of grace.

(a) Payee against
Maker, on a note
payable when de-
fendant's wife
came of age.

THAT whereas on the twenty-seventh day of June A.D. 1730, at, &c. made and signed his certain note, &c. and thereby acknowledged himself to have borrowed and received, on the said twenty-seventh of June in the year 1730 aforesaid, of the said plaintiff, the sum of one thousand pounds, being for the purchasing for himself a lieutenant's commission in the first regiment of foot guards, under the command of the right honourable the Duke of Marlborough, and which said one thousand pounds he the said defendant, in and by the said note, promised to pay on demand, as soon as his wife should attain the age of twenty-one years, and then and there delivered, &c.; whereby, and by reason, &c. and by force of the statute, he the said defendant became liable to pay, &c. according to the tenor and effect of the said note; and being so liable, &c. (assumpsit accordingly). And whereas the said defendant heretofore, to wit, on the day and year aforesaid, at, &c. aforesaid, (indebitatus assumpsit for money "borrowed and received of plaintiff by defendant;" assumpsit to pay *when F. the then and now wife* of the said defendant, should attain the age of twenty-one years; another Count for money lent, and like assumpsit, and a general insimul computasset; then introduce the following averment): And the said plaintiff in fact saith, that although the said F. the wife of the said defendant, at the time of

Averment that
wife has attained
her age of twen-
ty-one years.

(a) There are doubts whether the note be within the statute or not, though it will be good evidence under either of the common Counts. It seems to depend upon a contingency that may never happen, as the defendant's wife may never attain the age of twenty one. It will however serve as a precedent for notes payable upon a (a) *certain event*, as death or the like. A note made payable certainly and at all events is good within the statute 3. and 4. Anne; *secus*, if it be (b) *contingent*, and (c) *uncertain* whether it shall ever be paid or not. A note given to an (d) *infant* payable when he shall come of age is of the former kind. 1. Burr. 227, &c. A note payable on the death

of G. H. (e) *provided he leaves either of us*, &c. or, &c. is of the latter kind; and the declaration, being upon an *absolute note*, was not supported by the production of a *conditional one*. 1. Burr. 325.

(a) Str. 1217.

(b) B. R. Kingston v. Long, M. 25. G. 3. 3. Lord Raym. 67. Lord Raym. 1362. 1396. 8. Mod. 363. 4. Vin. 40. Pl. 16.

(c) Fort. 281. 10. Mod. 294. 316. Lord Raym. 1363. Bl. 782. 3. Will. 207. Bl. 1072. Will. 262.

(d) Bailey on Bills and Notes, 10.

(3) Burr. 323. Str. 1151. Com. 227. 4. Mod. 242.

making of the said note herein before mentioned, and also at the time of the making of the three several promises and undertakings first above mentioned, after the making of such promises and undertakings, to wit, on the eighteenth of January 1732, *did attain the age of twenty-one years*, to wit, at, &c. Yet, &c. (common conclusion) that the said plaintiff did not, (1) *upon his said wife's attaining the age of twenty-one years*, pay, nor hath he at any other time whatsoever paid, &c. although, &c. (Lay the request as well when his said wife attained her age of twenty-one years as aforesaid as afterwards) to wit, at, &c. aforesaid; but he so to do hath wholly refused and neglected, and still, &c. (1) Burr. 226.

THAT whereas the said defendant, on the twenty-fourth of July A. D. 1733, at, &c. [infirmul computassent] promise to pay *when requested.* 2d Count, [infirmul computassent] promise to pay, twenty fourth July 1734 (when the note became payable). And whereas the said defendant, on the said twenty-fourth of July in the year 1733 aforesaid, at, &c. aforesaid, (note made by himself). And whereas heretofore, to wit, on the said twenty-fourth day of July in the year 1733 aforesaid, at, &c. aforesaid, *one Mary Ferrers, then and there being the servant of the said defendant, in that behalf for him the said defendant*, made and signed a certain note, &c. bearing date, &c. and thereby, for the said defendant, promised to pay to the said plaintiff, by the name and description of, &c. or order, twelve months after the date of the said note, forty pounds for value received, and then and there delivered, &c. whereby, and by reason, &c. and by force of the statute, &c. the said defendant became liable to pay, &c. according to the tenor and effect of the said last-mentioned note; and being so liable, &c. (assumpsit accordingly). [Add the usual common Counts, except the infirmul computassent, which is already directed; and common conclusion.] (a) *Payee against Drawer on a note made by the drawer's wife as his servant.*

All the Counts may remain, though the first and the third are unnecessary. The first is inconsistent with the fact, and the third is included in the fourth, which is upon the real case. It might also be as well were they transposed, and the Count upon the note put first.

FOR that whereas said defendant, on the twenty-eighth of January A. D. 1742, at, &c. made and signed his certain note in writing, commonly called, &c. bearing date the twenty-eighth of January 1724, when in truth and in fact the said note was meant, intended, and understood to bear date *the twenty eighth day of January 1742*; and by the said note defendant promised, &c. (as in other cases). Declaration on note bearing wrong date.

FOR

Declaration on
note payable by
instalments, where
several instalments
are due.

FOR that whereas the said defendant, on, &c. at, &c. made and signed his certain note in writing, commonly called, &c. bearing date, &c. and thereby promised to pay to the said plaintiff, by the name of, &c. or order, the sum of fifteen pounds for value received, in manner following, that is to say, *at half a guinea by the month from the date of the said note*; and that on the non-payment thereof the whole of the said note should be in force, and then and there delivered, &c. whereby, and by reason, &c. and by force of the statute, &c. the said defendant became liable to pay to the said plaintiff the said sum of fifteen pounds in the said note specified; according to the tenor and effect of the said note; and being so liable, he the said defendant, in consideration thereof, afterwards, to wit, on, &c. aforesaid, at, &c. aforesaid, undertook, &c. to pay the said sum of money in the said note specified, according to the tenor and effect of the said note x. And the said plaintiff in fact further saith, that after the making of the said note, and after the making of the aforesaid promises and undertakings of the said defendant, and before the exhibiting, &c. to wit, on the first day of November, in the year 1787, aforesaid, at, &c. aforesaid, a great part of the said sum of fifteen pounds in the said note specified, to wit, the sum of five pounds fifteen shillings and sixpence, being at and after the rate of half a guinea per the month for eleven months, elapsed since the making of the said note, and ending and ended on the day and year last aforesaid, became and was due and payable from the said defendant to the said plaintiff; but that the said defendant did not then and there pay the same, or any part thereof, to him the said plaintiff, but therein wholly failed and made default, contrary to the tenor and effect, true intent and meaning, of the said note, and the aforesaid promise and undertaking of the said defendant; whereby, and according to the tenor and effect of the said note, and the aforesaid promise and undertaking of the said defendant, the whole of the said note became and was in force, and the said sum of fifteen pounds therein specified, became and was due and forthwith payable from the said defendant to the said plaintiff, to wit, at, &c. aforesaid; whereof the said defendant afterwards, to wit, on the second day of the said month in the year last aforesaid, there had notice. And whereas, &c. (the common Counts, “on the day and year last aforesaid,” and the following conclusion): Yet the said defendant, not regarding his said several promises and undertakings so by him in manner and form aforesaid made, but contriving, &c. hath not as yet paid the said sum of fifteen pounds in the aforesaid note specified, or any part thereof, nor the said sums of money in the said last-mentioned promises and undertakings mentioned, or any or either of them, or any part thereof, to the said plaintiff, (although so to do he the said defendant was requested by the said plaintiff afterwards, to wit, on the day and year last aforesaid, and often afterwards, to wit, at, &c. aforesaid); but he so to do hath hitherto wholly refused, and still refuses so to do, to wit, at, &c. aforesaid.

(GO on as in the last Precedent, till you come to the end of the assumpsit at this mark x, then proceed as follows :) And the said plaintiff in fact further saith, that after the making, &c. and before the exhibiting, &c. to wit, on, &c. one month from the date of the said note being then elapsed, ten shillings and six pence, part of the said sum of fifteen pounds in the said note specified, as and for the first of the said monthly payments in the said note mentioned, became and was due from the said defendant to the said plaintiff; but that the said defendant did not then and there pay, &c. but therein wholly failed, &c. contrary, &c. whereby, &c. the whole of the said note became and was in force; and the said sum of fifteen pounds therein specified became and was due and forthwith payable from the said defendant to the said plaintiff; whereof, &c. had notice.

Declaration on a similar note with the last where only one instalment was due at the time of bringing the action.

(PROCEED as in the last Precedent but one, till you come to this mark + at the end of the assumpsit, then go on as follows :) And the said plaintiff in fact further saith, that although the said defendant paid a part of the said sum of fifteen pounds in the said note specified, to wit, the sum of five pounds fifteen shillings and six pence, according to the tenor and effect of the said note; yet the said plaintiff in fact further saith, that after the said sum of five pounds fifteen shillings and six pence had been and was so paid and accepted, and before the exhibiting, &c. to wit, on the first day of November, in the year of Our Lord 1795, at, &c. aforesaid, ten shillings and six pence of the residue of the said sum of fifteen pounds in the said note specified, for one of the monthly payments in the said note mentioned, becoming payable next after the payment of the said sum of five pounds fifteen shillings and six pence so paid as aforesaid, became and was due and payable from the said defendant to the said plaintiff; but that the said defendant did not then and there pay the same, &c. but therein wholly failed, &c. contrary, &c. whereby, &c. the said note became in force as to the residue of the said sum of fifteen pounds therein specified; and such residue, being a large sum of money, to wit, &c. became and was forthwith payable from the said defendant to the said plaintiff, to wit, at, &c. aforesaid; whereof the said defendant afterwards, to wit, on the second day of the said month of November, in the year aforesaid, there had notice. (Like Counts and conclusion as in the last Precedent but one, varying only in this, viz.) hath not paid the said residue of the said sum of fifteen pounds in the said note specified, or any part thereof, nor, &c. to the said plaintiff, (although, &c. but, &c.)

Declaration on a similar note where part has been paid, and the residue becomes payable in consequence of the non-payment of an intermediate instalment.

(PROCEED as in the three last preceding declarations, till you have stated the assumpsit in the Count upon the note; then go on with the common Counts, laying the cause of action on a

where no part of the note has been paid, though sufficient time for the payment of the whole has elapsed.

day subsequent to that on which the whole note became due; then go on with the following averment and conclusion :) And the said plaintiff in fact further saith, that although *a sufficient time* for the payment of the said sum of fifteen pounds in the said note specified, according to the tenor and effect of the said note, hath long since elapsed, yet the said defendant, not regarding his said several promises and undertakings so by him, &c. but contriving, &c. hath not as yet paid the said sum of fifteen pounds in the said note specified, or any part thereof, according to the tenor and effect of the said note, or in any other manner whatsoever, nor the said several sums of money in the several last-mentioned promises and undertakings specified, or any or either of them, or any part thereof, to the said plaintiff, (although so to do he the said defendant was requested by the said plaintiff, to pay the said several sums of money in the said promissory note mentioned as the same respectively became due and payable, according to the tenor and effect of the said note, as also the said several sums of money, as well as to such money become due and payable, as since the making of the said several last mentioned promises and undertakings, to wit, on the day and year last aforesaid, and often afterwards, to wit, at, &c. aforesaid,) but he so to do hath hitherto wholly refused, and still refuses, to wit, at, &c. aforesaid.

*Declaration by
Executors of Pay-
ee against Ma-
ker on a promise
to the executors.*

FOR that whereas the said C. D. to wit, on the fifteenth day of September A. D. 1789, at Westminster in the county of Middlesex, made his certain note in writing, commonly called a promissory note, his own proper hand being thereunto subscribed, bearing date the same day and year aforesaid, and then and there delivered the said note to the said E. F. in his lifetime; by which said note he the said C. D. then and there promised to pay, &c. after the date thereof, to the said E. F. in his lifetime, (by the name and addition of Mr. E. F.), or order, the sum of sixty pounds for value received; by means whereof, and by force of the statute in such case made and provided, he the said C. D. became liable to pay to the said E. F. in his lifetime, the said sum of money in the said note specified, according to the tenor and effect of the said note: and the said A. and B. *executors* as aforesaid in fact say, that after the making of the said note, and before the payment of the said sum of money therein specified, to wit, on the fourth day of November, in the year of Our Lord 1789 aforesaid, at, &c. aforesaid, the said E. F. died, having first duly made and published his last will and testament in writing, and thereby constituted and appointed the said A. and B. *executors* thereof; after whose death, and before the payment of the said sum of money in the said note specified, to wit, on the eighteenth day of November, in the year last aforesaid, at, &c. aforesaid, the said A. and B. duly proved the said last will and testament of the said E. F. and took upon themselves the burthen of the execution thereof; of all which said several promises the said C. D. afterwards, to wit,

wit, on the fifth day of December, in the year of Our Lord 1789, at, &c. aforesaid, had notice; and thereupon he the said C. D. in consideration thereof, then and there, and before the payment of the said sum of money in the said note specified, to wit, on the same day and year last aforesaid, at, &c. aforesaid, undertook, and then and there faithfully promised the said A. and B. as *executors* as aforesaid, to pay them the said sum of money in the said note specified, when he the said C. D. should be thereto afterwards requested.

CHESHIRE, *ff.* Robert Woodhouse complains of Rowland Declaration a-
notherwise Robert Cadman, being in the custody, &c. in a plea of *gainst the surviving*
trespass on the case, &c. for that whereas the said defendant, *joint promissory*
and one Thomas Cadman deceased, whom the said defendant hath *note bearing interest,*
survived, in the lifetime of the said Thomas Cadman, to wit, on *rest, at suit of*
the *fourth day of April A. D. 1772,* to wit, at Nantwich in the *Payee; with a*
said county of Chester, made their certain note in writing, com- *Count upon the*
monly called a promissory note, bearing date the day and year *acknowledgment*
aforesaid, and signed by them the said defendant and Thomas Cad- *of defendant*
man, and thereby then and there promised to pay to the said plain- *alone, to take it*
tiff, or order, the sum of thirty pounds, *with interest* for the same, *out of the sta-*
after the rate of four pounds to the hundred for a year for *value* *tute of Limita-*
received, and then and there delivered the said note to the said *tions. Vide*
plaintiff: whereby, and by reason whereof, and by force of the sta- *2. Burr. 1099.*
tute in such case made and provided, the said Thomas Cadman
and defendant became liable to pay to the said plaintiff the said
sum of thirty pounds in the said note specified, with such interest
for the same as aforesaid, according to the tenor and effect of the
said note; and being so liable, they the said Thomas Cadman and
defendant, in consideration thereof, afterwards, in the lifetime of
the said Thomas Cadman, to wit, on the day and year aforesaid,
at Nantwich aforesaid, in the county aforesaid, undertook, and
faithfully promised the said plaintiff, to pay him the said sum of
thirty pounds, in the said note specified, with such interest for
the same as aforesaid, according to the tenor and effect of the said
note. And whereas the said defendant and Thomas Cadman af-
terwards, in the lifetime of the said Thomas Cadman, to wit, on
the day and year aforesaid, at, &c. aforesaid, were indebted to the
said plaintiff in the sum of fifty pounds of lawful, &c. for money
by them the said defendant and Thomas Cadman before that time
had and received to the use of the said plaintiff; and being so in-
debted, they the said defendant and Thomas Cadman, in consid-
eration thereof, afterwards, to wit, in the lifetime of the said Tho-
mas Cadman, to wit, on the day and year aforesaid, at, &c. aforesaid,
undertook, and faithfully promised the said plaintiff, to pay
him the said last mentioned sum of money, when they should be
thereto afterwards requested: Yet the said defendant and Thomas
Cadman, in the lifetime of the said Thomas Cadman, and the said
defendant since the death of the said Thomas Cadman, not re-
garding their said several promises and undertakings so by them in

Conclusion to
the first two
Counts.

2d Count on the note for the interest, and on a promise by defendant since the death of the deceased, joint maker, on his own acknowledgment.

manner and form aforesaid made, but contriving, &c. to deceive, &c. the said plaintiff in this behalf, have not, nor hath either of them, paid the said sum of thirty pounds in the said first promise and undertaking mentioned, with such interest for the same as aforesaid, or for any part thereof, nor the said sum of money in the other promise and undertaking hereinbefore mentioned, or any part thereof, to the said plaintiff, (although so to do the said defendant and Thomas Cadman were required by the said plaintiff in the lifetime of the said Thomas Cadman, to wit, on the day and year aforesaid, as was the said defendant since the death of the said Thomas Cadman, to wit, on the first day of January A. D. 1753, and often both before and afterwards, to wit, at Nantwich aforesaid, in the county aforesaid,) but they or either of them, to pay the same, or any or either of them, to the said plaintiff, have, and each of them hath, wholly refused and neglected, and the said defendant still refuses so to do. And whereas the said defendant, and the aforesaid Thomas Cadman deceased, in the lifetime of the said Thomas Cadman, to wit, on the said fourth day of April in the year 1772 aforesaid, to wit, at Nantwich aforesaid, in the county aforesaid, made their certain other note in writing, commonly called a promissory note, bearing date the day and year last aforesaid, and signed by them the said defendant and the said Thomas Cadman, and thereby then and there promised to pay to the said plaintiff, or order, the sum of thirty pounds, with interest for the same at the rate of four pounds to the hundred for a year, for value received, and then and there delivered the said last mentioned note to the said plaintiff; whereby, and by reason whereof, and by force of the statute in such case made and provided, the said Thomas Cadman and the said defendant became liable to pay to the said plaintiff the said sum of thirty pounds in the said last mentioned note specified, with such interest for the same as aforesaid, according to the tenor and effect of the said last mentioned note; and the said defendant and Thomas Cadman having been, and the said defendant being so liable as last aforesaid, and the said sum of thirty pounds in the said last mentioned note specified, with such interest for the same as aforesaid, from the time of the making of such last mentioned note, being wholly unpaid and in arrear to the said plaintiff, the said defendant, in consideration of such premises, after the death of the said Thomas Cadman, and whilst the said sum of thirty pounds and such interest as aforesaid were so in arrear and unpaid as aforesaid, to wit, on the thirteenth day of January A. D. 1783 as aforesaid, at Nantwich aforesaid, in the county aforesaid, undertook, and faithfully promised the said plaintiff, to pay the said sum of thirty pounds in the said last mentioned note specified, with such interest as in the said last mentioned note is specified, from the date of the said last mentioned note, according to the tenor and effect of the said note: Yet the said defendant, not regarding his said last mentioned promise and undertaking so by him in manner and form aforesaid made, but contriving and fraudulently

Conclusion.

intending craftily and subtilly to deceive and defraud the said plaintiff in this behalf, hath not paid the said sum of thirty pounds in the said note in the said last mentioned promise and undertaking specified, with such interest for the same as aforesaid, or for any part thereof, to the said plaintiff, (although so to do the said defendant was requested by the said plaintiff afterwards, to wit, on the day and year last aforesaid, and often afterwards, to wit, at Nantwich aforesaid, in the county aforesaid,) but he so to do hath hitherto wholly refused, and still doth refuse, to the damage of the said plaintiff of one hundred pounds; and therefore he brings his suit, &c.

J. C. and H. L. comp'ain of T. B. and W. W. being in the custody of the marshal of the Marshalsea of our lord the now king, &c. for that whereas the said L. and W. on the day of in the year of Our Lord 1787, at Calne, in the said county, made and signed their certain note in writing, commonly called a promissory note, bearing date on the day and year aforesaid, and then and there delivered the said note to the said John and Henry; by which said note they the said Thomas and William jointly and severally promised to pay to the said John and Henry, by the name and description of Messrs. L. and C. or order, one hundred and four pounds three shillings, value received, by the following payments or installments, that is to say, one moiety or one-half part, being fifty-two pounds one shilling and sixpence, on the first day of January then next ensuing, and the other moiety or fifty-two pounds one shilling and sixpence thereof on the first day of July in the year 1788; but on failure of either of the said payments, the said T. and W. did, by the said note, promise and agree that the whole sum of money therein specified should then become due and demandable: and the said John and Henry in fact say, that afterwards, to wit, on the first day of January in the year last aforesaid, failure was made in one of the said payments, that is to say, in the payment of fifty-two pounds one shilling and sixpence, which after the making of the said note, to wit, on the day and year last aforesaid, became due and payable by them the said T. and W. to them the said J. and H. according to the tenor and effect of the said note; by reason whereof, and by force of the statute in such case made and provided, the said T. and W. became liable to pay to the said John and H. the whole sum of one hundred and four pounds three shillings in the said note mentioned, according to the tenor and effect of the said note; and being so liable, they the said T. and W. in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at C. aforesaid, in the said county, undertook, and to the said John and Henry then and there faithfully promised, to pay them the said sum of one hundred and four pounds three shillings, upon demand. And whereas also the said Thomas and William afterwards, to wit, on the aforesaid eighteenth day of April in the year of Our Lord 1787, at C. aforesaid, in the said county,

Declaration in B. R. upon a joint promissory note, payable by installments.

See this case reported a Term Rep. 763 Cockburn et al. against Bennett et al.

2d Count for the whole.

made their certain other note in writing, commonly called a promissory note, their own proper hands being thereunto *subscribed*, bearing date the same day and year last aforesaid, and then and there delivered the said last mentioned note to the said John and Henry; by which said last mentioned note they the said Thomas and William promised to pay to the said John and Henry, (by the name, addition, and description of Messrs. L. and C.) or order, one hundred and four pounds three shillings, by the following payments or instalments, that is to say, one moiety or half part, being fifty-two pounds one shilling and sixpence, on the first day of January then next ensuing, and the other moiety, or fifty-two pounds one shilling and sixpence, on the first day of July 1788, *value then received* by them the said Thomas and William; by reason whereof, and also *by force of the statute* in such case made and provided, the said Thomas and William became liable to pay to the said John and Henry the said sum of money in the said note mentioned, according to the tenor and effect of the said note; and being so liable, they the said Thomas and William, in consideration thereof, afterwards, to wit, on the aforesaid eighteenth day of April in the year 1787, at C. aforesaid, in the county aforesaid, undertook, and to the said T. and H. then and there faithfully promised to pay to them the said sum of money mentioned in the said last mentioned note, according to the tenor and effect of the said last mentioned note. (Count for goods sold and delivered; indebitatus assumpsit thereon; another Count upon a quantum meruit; Counts for money lent and advanced; money paid, &c.; money had and received; account stated, Damnum two hundred pounds.)

Plea thereto:
1st, Non assumpsit; 2d, Of payment, and acceptance of a gross sum in satisfaction.

And the said T. B. and W. W. by James H. their attorney, come and defend the wrong and injury, when, &c. and say, that they *did not undertake* and promise in manner and form as the said J. Cockshot and H. Lister have above thereof complained against them; and of this they put themselves upon the country, &c. *And for further plea* in this behalf the said Thomas Bennett and W. W. by leave of the Court here for this purpose first had and obtained, according to the form of the statute in that case made and provided, say, that the said J. Cockshot and Henry Lister ought not to have or maintain their aforesaid action thereof against them the said T. B. and W. W. because they say, that after the making of the aforesaid promises and undertakings in the said declaration mentioned, and before the day of exhibiting of the bill of the said John C. and H. L. against them the said T. B. and W. W. to wit, on the eighteenth day of July 1787, at C. aforesaid, in the county of Lancaster, they the said Thomas B. and W. W. paid to the said J. C. and H. L. the sum of one hundred and twenty-one pounds five shillings, in full satisfaction and discharge of all and every the aforesaid promises in the said declaration mentioned, and of the damages sustained by the said J. C. and H. L. by reason of the non-performance of the same promises and undertakings, and each and every of them, and that the said

J. C.

J. C. and H. L. then and there *accepted*, had, and received of the said Thomas Bennett and W. W. the said sum of one hundred and twenty-one pounds five shillings, in full satisfaction and discharge of all and every the aforesaid promises and undertakings in the said declaration mentioned, and of the damages sustained by the said J. C. and H. L. by reason of the non-performance of the same promises and undertakings, and each and every of them; and this the said T. B. and W. W. are ready to verify; wherefore they pray judgment if the said J. C. and H. L. ought to have and maintain their aforesaid action thereof against the said Thomas Bennet and W. W. &c. And for further plea in this behalf, the said T. B. and W. W. by leave of the Court here for this purpose first had and obtained, according to the form of the statute in that case made and provided, say, that the said J. C. and H. L. ought not to have or maintain their aforesaid action thereof against them the said T. B. and W. W. because they say, that after the making of the said promises and undertakings in the said declaration mentioned, and before the day of exhibiting the bill of the said J. C. and H. L. against them the said T. B. and W. W. to wit, on the eighteenth day of April in the year of Our Lord 1787, at C. aforesaid, in the county of L. aforesaid, they the said T. B. and W. W. (and one Henry Bennett as the *surety* of the said T. B. and W. W.) made their certain note in writing, commonly called a promissory note, with their and *each* of their hands thereunto subscribed, bearing date the same day and year last aforesaid, and the said last mentioned note, so subscribed, then and there *delivered* to the said J. C. and H. L.; by which said last mentioned note they the said T. B. W. W. and H. B. did *jointly and severally* promise to pay to the said John C. and H. L. (by the name and description of Messrs. L. and C.) or order, one hundred and twenty-one pounds five shillings, on the fifth day of July then next ensuing, for *value therein expressed to have been received* by the said T. B. and W. W. and H. B.: and the said T. B. and W. W. further say, that the said last mentioned promissory note was so delivered as aforesaid to the said John Cockshot and H. L., by the said T. B. and W. W. and the said H. B. as their surety, in full satisfaction and *discharge* of all and every of their aforesaid promises and undertakings in the said declaration mentioned, and of the damages sustained by the said J. C. and Henry L. by reason of the non-performance of the same promises and undertakings, and each and every of them; and that the said J. C. and H. L. then and there *accepted*, had, and received the said last mentioned promissory note from the said T. B. and W. W. in full satisfaction and discharge of all and every the aforesaid promises and undertakings in the said declaration mentioned, and the damages sustained by the said J. C. and H. L. by reason of the non-performance of the same promises and undertakings, and each and every of them: and the said T. B. and W. W. further say, that after the making and delivering of the said last-mentioned promissory note by the said T. B. and W. W. and Henry B. to the said J. C.

3d, That defendants, with a *surety*, gave a promissory note to plaintiffs for a sum in gross in satisfaction, which plaintiffs accepted as such, and which was duly paid.

and H. L. and then having, accepting, and receiving, the same as aforesaid, to wit, on the said fifteenth day of July in the year of Our Lord 1787, at C. aforesaid, in the county aforesaid, they the said T. B. W. W. and H. B. paid to the said J. C. and H. L. the said one hundred and twenty-one pounds five shillings mentioned in the said last mentioned promissory note, according to the tenor and effect of the same promissory note; which said one hundred and twenty-one pounds five shillings the said J. C. and H. L. then and there accepted, had, and received, in full satisfaction and discharge of the said last mentioned promissory note; and this the said T. B. and W. W. are ready to verify; wherefore they pray judgment if the said J. C. and H. L. ought to have or maintain their aforesaid action thereof against them the said T. B. and W. W. &c.

Replication to the second plea, protesting that defendant did not pay the money therein mentioned in satisfaction: For replication says, that plaintiffs did not so receive it.

And the said John and Henry L. as to the said plea of the said Thomas and William by them secondly above pleaded in bar, say, that the said John and H. L. by reason of any thing in that plea alledged, ought not to be barred from having and maintaining their aforesaid action thereof against them the said T. and W.; because *protesting*, that the said Thomas and William *did not pay* to the said J. and H. L. the sum of one hundred and twenty-one pounds five shillings, in full satisfaction and discharge of all and every the aforesaid promises and undertakings in the said declaration mentioned, and of the damage sustained by the said J. and H. L. by reason of the non-performance of the same promises and undertakings, and each and every of them, in manner and form as the said Thomas and William have above in their said plea in that behalf alledged: Nevertheless, for replication in this behalf, the said J. and H. L. say, that they the said J. and H. L. did not, nor did either of them, *accept*, have, or receive of the said Thomas and William the said sum of one hundred and twenty-one pounds five shillings, in full satisfaction and *discharge* of all and every the aforesaid promises and undertakings in the said declaration mentioned, and of the damages sustained by the said J. and H. L. by reason of the non-performance of the same promises and undertakings, and each and every of them, in manner and form as the said Thomas and William have above in their said plea in that behalf alledged; and this the said J. and H. L. pray may be inquired of by the country; and the said Thomas and William do the like, &c. *And as to the said plea of the said Thomas and William by them lastly above pleaded in bar, they the said J. and H. L. say, that they, by reason of any thing in that plea alledged, ought not to be barred from having and maintaining their aforesaid action thereof against them the said Thomas and William; because protesting, that the said Thomas and William, and the said Henry Bennett, in the said plea mentioned as the surety of the said Thomas and William, did not deliver the said promissory note, delivered to the said J. and H. L. by the said Thomas, William, and Henry B. as their surety, in full satisfaction and discharge of* all

Replication to third plea, same.

all and every the aforesaid promises and undertakings in the said declaration mentioned, and of the damages sustained by the said John and Henry L. by reason of the non-performance of the same promises and undertakings, and each and every of them, in manner and form as the said Thomas and William have above in their said plea in that behalf alledged: Nevertheless, for replication in this behalf, the said John and H. L. did not accept, have, and receive the said promissory note in the said plea mentioned from the said Thomas and William and the said H. B. in full satisfaction and discharge of all the aforesaid promises and undertakings in the said declaration mentioned, and the damages sustained by the said J. and H. L. by reason of the non-performance of the same promises and undertakings, and each and every of them, in manner and form as the said Thomas and William have above in their said plea in that behalf alledged; and this they the said J. and Henry pray may be inquired of by the country; and the said Thomas and William do the like.

N. B. The defendants obtained a verdict at the summer assizes 1788; and Law, of counsel for the plaintiff, obtained a rule to shew cause why a new trial

should not be granted, which was afterwards discharged in M. T. 1788. For the arguments see 2 Term Rep. 763. B. R. 117.

WILLIAM TYRER complains of Robert Lawson and John Tunstall, being, &c. in a plea of trespass on the case, &c. for that whereas the said defendants heretofore, *in the lifetime* of one Joshua Birchall, deceased, whom the said William Tyrer hath survived, to wit, on the sixth day of December in the year of Our Lord 1788, to wit, at Liverpool in the county of Lancaster, made and signed their certain note in writing, commonly called a promissory note, bearing date the day and year aforesaid, and then and there delivered the said note to the said William Tyrer and the said Joshua Birchall; by which said note they the said defendants, jointly and separately, promised to pay to the said plaintiff and the said Joshua Birchall, by the name and description of Mr. William Tyrer and Mr. Joshua Birchall, or order, the sum of twelve pounds nine shillings, by four quarterly instalments, the first payment whereof to commence and be made on the sixth day of March then next ensuing, for *value received*: and the said plaintiff in fact says, that *after the making* of the said note, and *after the death* of the said Joshua Birchall, and *before the exhibiting* of this bill, to wit, on the sixth of September 1789, to wit, at Liverpool aforesaid, in the county aforesaid, *three of the said instalments* or quarterly payments of the said sum of money in the said note mentioned, amounting in the whole to a large sum of money, to wit, the sum of nine pounds six shillings and ninepence of lawful money of Great Britain, *became and were due* and payable from the said Robert and John, according to the tenor and effect of the said note, to the said plaintiff as survivor of the

Declaration by a surviving Payee against two Makers of a promissory note, payable by instalments, where only some were due.

States the whole to have become payable by the non-payment of the instalment said due.

2d Count for all
the instalments.

said Joshua; whereof the said Robert and John then and there had due notice: whereby, and by reason of which several premises, *and by force of the statute* in such case made, &c. the said defendants became liable to pay to the said plaintiff the said three of the said four several instalments in the said note specified, according to the tenor and effect of the said note; and being so liable, they the said Robert and John, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, at Liverpool aforesaid, in the county aforesaid, undertook, and then and there faithfully promised the said plaintiff to pay him the said three of the said four several instalments in the said note specified, according to the tenor and effect of the said note. And whereas the said defendants, in the lifetime of the said Joshua Birchall, now deceased, to wit, on the sixth day of December in the said year of Our Lord 1788, at Liverpool aforesaid, in the county aforesaid, made and signed their certain other note in writing, commonly called a promissory note, bearing date the day and year last aforesaid; and thereby *jointly and separately* promised to pay to the said William Tyrer and Joshua Birchall, by the names and descriptions of Mr. William Tyrer and Mr. Joshua Birchall, or order, the sum of twelve pounds nine shillings, by four quarterly instalments, the first payment whereof to commence and be made on the sixth day of March next after the making of the said note, and then and there delivered the said note to the said plaintiff and the said Joshua Birchall. And the said plaintiffs in fact further say, that after (as in the other Count) three of the said instalments or quarterly payments of the said money in the said last mentioned note, according to the tenor and effect thereof, became and were due and payable from the said defendants to the said plaintiff as *survivor* of the said Joshua Birchall; whereof the said defendants then and there had due notice: whereby, and by reason of which said several last mentioned premises, and by force of the statute in such case, &c. the said Robert and John became liable to pay to the said plaintiff the said sum of money in the said last mentioned note specified, when they the said defendants should be thereto afterwards requested; and being so liable, they the said defendants, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at Liverpool aforesaid, in the county aforesaid, undertook, and then and there faithfully promised the said plaintiff to pay him the said sum of money in the said last mentioned note specified, when they the said defendants should be thereto afterwards requested. (Counts for money paid, &c.; money lent, &c.; money had and received, &c.; upon account stated; common conclusion.)

In drawing this declaration I have considered Birchall as dead when the 3d instalment became due. I have inserted the 2d Count on the authority of the case of Beckwith against Nott, Cro. Jac. 504. which says, that in such a case

as this it is best to count of damages for the entire debt, because the jury may give the whole sum in damages; and, if they do, it may be pleaded in bar to another action.

THOMAS BARROW.

SUFFOLK,

SUFFOLK, to wit. Richard Debney, late of, &c. was attached to answer unto Robert Stannard and Sarah his wife, (which said Sarah is administratrix of all and singular the goods, rights, credits, and chattels which were of Robert Debney, her late husband, deceased, at the time of his death, who died intestate,) of a plea of trespass on the case, &c. And thereupon the said R. S. and Sarah his wife, *as administratrix aforesaid*, by Andrew Evans their attorney, complain, that whereas the said Richard *on the thirtieth day of September* in the year of Our Lord 1775, to wit, at Tunstall in the county of Suffolk, made his certain note in writing, commonly called a promissory note, his own proper hand being thereto subscribed, bearing date the same day and year aforesaid, and then and there *delivered* the said note to the said Robert Debney *in his lifetime*; by which said note he the said Richard then and there promised to *pay on demand* to the said R. D. in his lifetime, (by the name of Robert Debney,) the sum of one hundred and ninety two pounds four shillings and fourpence for value received by him the said Richard: by means whereof, and *by force of the statute* in such case made and provided, he the said Richard became liable to pay to the said R. D. in his lifetime, the said sum of money in the said note specified, when he the said Richard should be thereto afterwards requested; and being so liable, he the said Richard, in consideration thereof, afterwards, to wit, on the day and year aforesaid, at Tunstall aforesaid, in the county aforesaid, undertook, and faithfully promised the said R. D. in his lifetime to pay him the said sum of money in the said note specified, when he the said Richard should be thereto afterwards requested. (A Count for goods sold and delivered, with quantum meruit.) Yet the said Richard, not regarding his said several promises and undertakings so by him made in manner and form aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said R. D. *in his lifetime*, and the said Sarah after the death of the said R. D. and *whilst she was sole and unmarried*; to which said Sarah after the death of the said R. D. and whilst she was sole and unmarried, to wit, on the first day of July in the year of Our Lord 1780, at Tunstall aforesaid, in the county aforesaid, administration of all and singular the goods, rights, credits, and chattels which were of the said R. D. deceased, at the time of his death, who died intestate, by John Gooch, doctor of divinity, official in and throughout the archdeaconry of Suffolk, lawfully constituted (to whom the commission of administration in that behalf belonged) in due form of law was granted; and the said R. S. and Sarah his wife (which said Sarah is administratrix aforesaid,) *since their intermarriage* in this behalf say, that he the said Richard hath not as yet paid the said several sums of money, or any or either of them, or any part thereof, either to the said R. D. in his lifetime, or to the said Sarah, (as administratrix as aforesaid) after the death of the said R. D. and whilst she was sole and unmarried, or to the said R. S. and Sarah his wife, which said Sarah is administratrix as aforesaid, since their intermarriage, or to any or either of them, although to do this the said Richard was requested by

Declaration by husband and wife, *Administratrix* of her late husband, on a promissory note given by Defendant to her late husband.

Breach.

the

Another Count
on an account
stated with the
wife whilst she
was sole.

the said R. D. in his lifetime, and by the said Sarah after the death of the said R. D. whilst she was sole and unmarried, and by the said R. S. and Sarah his wife (which said Sarah is administratrix as aforesaid) *since their intermarriage*, to wit, on the first day of January in the year of Our Lord 1785, and often both before and afterwards, to wit, at Tunstall aforesaid, in the county aforesaid; but he to do this hath hitherto wholly refused, and still refuses to pay the same, or any part thereof, to the said R. S. and Sarah his wife, (which said Sarah is administratrix as aforesaid,) or to either of them. And whereas the said Richard, after the death of the said R. D. to wit, on the twentieth day of July in the year of Our Lord 1780 aforesaid, at Tunstall aforesaid, in the county aforesaid, accounted together with the said Sarah whilst she was sole and unmarried, of and concerning divers other sums of money before that time due and owing from the said Richard to the said R. D. in his lifetime and at the time of his death, and then being in arrear and unpaid; and upon that occasion, he the said plaintiff was then and there found in arrear and indebted to the said Sarah in the said sum of one hundred pounds of like lawful money of Great Britain; and being so found in arrear and indebted, he the said Richard, in consideration thereof, afterwards, to wit, on, &c. at, &c. undertook, and then and there faithfully promised the said Sarah, whilst she was sole and unmarried, to pay her the said last-mentioned sum of money, when he the said Richard should be thereto afterwards requested: Yet the said Richard, not regarding his said last-mentioned promise and undertaking so by him in manner and form aforesaid made, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said Sarah whilst she was so sole and unmarried, and the said R. S. and Sarah his wife (which said Sarah is administratrix as aforesaid,) *since their intermarriage* in this behalf, hath not as yet paid the said last-mentioned sum of money, or any part thereof, to them or either of them, although to do this he the said Richard was requested by the said Sarah whilst she was so sole and unmarried, to wit, on, &c. and by the said R. S. and Sarah his wife (which said Sarah is administratrix as aforesaid,) *since their intermarriage*, to wit, on, &c. and often both before and afterwards, to wit, at, &c.; but he to do this hath hitherto wholly refused, and still refuses to pay the same, or any part thereof, to the said R. S. and Sarah his wife, (which said Sarah is administratrix as aforesaid,) or to either of them. And whereas the said Richard afterwards, and after the intermarriage of the said Sarah with the said R. S. to wit; on, &c. at, &c. accounted together with the said R. S. and Sarah his wife, (which said Sarah is administratrix as aforesaid,) of and concerning divers other sums of money before that time due and owing from the said Richard to the said R. D. in his lifetime, and at the time of his death, and then being in arrear and unpaid; and upon that occasion he the said Richard was then and there found in arrear and indebted to the said R. S. and Sarah his wife, (which said Sarah is administratrix as aforesaid,) in the further sum of one hundred pounds

Account stated
with R. D. her
late husband in
his lifetime.

pounds of like lawful money of Great Britain; and being so found in arrear and indebted, he the said Richard, in consideration thereof, afterwards, to wit, on, &c. at, &c. undertook, and then and there faithfully promised the said R. S. and Sarah his wife (which said Sarah is administratrix as aforesaid,) to pay them the said last-mentioned sum of money, when he the said Richard should be thereto afterwards requested: Yet the said Richard, not regarding his said last-mentioned promise and undertaking so by him in manner and form aforesaid made, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said R. S. and Sarah his wife (which said Sarah is administratrix as aforesaid) in this behalf, hath not as yet paid the said last mentioned sum of money, or any part thereof, to them or either of them, although to do this he the said Richard was requested by the said R. S. and Sarah his wife, (which said Sarah is administratrix as aforesaid,) afterwards, to wit, on, &c. and often afterwards, to wit, at, &c. in, &c. ; but he to do this hath hitherto wholly refused, and still refuses so to do, to the damage of the said R. S. and Sarah his wife (which said Sarah is administratrix as aforesaid,) of one hundred pounds, and therefore they bring their suit: and they bring into court here the letters of administration of the said J. G. which fully prove to the said Court here that she the said Sarah is administratrix in form aforesaid.

Drawn by Mr. TIDD.

LONDON, to wit. Herbert, otherwise Hubert van Hamel, late of Westminster in the county of Middlesex, esquire, was attached to answer unto Thomas Odwin, William Firebrace, and George Reed, of a plea of trespass on the case, &c. And thereupon the said Thomas, William, and George, by Samuel Underwood their attorney, complain, that whereas the said Herbert, otherwise Hubert, (1) on the twelfth day of November in the year of Our Lord 1784, in certain parts beyond the seas, to wit, at the island of Barbadoes in the West Indies, that is to say, in the parish of St. Mary le Bow, in the ward of Cheap, made his certain note in writing, commonly called a promissory note, his own proper hand being thereto subscribed, bearing date the same day and year aforesaid, and then and there delivered the said note to the said T. W. and G.; by which said note he the said H. otherwise H. by the name of Hubert van Hamel, then and there promised to pay, on the first day of May then next, (that is to say, on the first day of May in the year of Our Lord 1785,) to the said Thomas, William, and George, (by their names and additions of Messrs. Odwin, Firebrace, and Reed,) or their order, two hundred pounds currency, that is to say, two hundred pounds current money of the island of Barbadoes aforesaid, value received: and the said Thomas, William, and George in fact say, that, at the time of the making of the said note, the said two hundred pounds currency therein mentioned, was of a large

Declaration on a promissory note drawn in parts beyond the seas for 200l. currency.

Payee v. Maker.
(1) Stat. 22.

Averment of the value of the currency.

large value, to wit, of the value of one hundred and eighty pounds of lawful money of Great Britain, to wit, at London aforesaid, in the parish and ward aforesaid: by means whereof, and by force of the statute in such case made and provided, the said Hubert became liable to pay to the said Thomas, William, and George the said sum of money in the said note specified, according to the tenor and effect of the said note; and being so liable, he the said Hubert, in consideration thereof, afterwards, to wit, on, &c. at, &c. undertook, and then and there faithfully promised the said Thomas, William, and George, to pay the said sum of money in the said note specified, according to the tenor and effect of the said note. (Add the common money Counts.) Yet the said Hubert, not regarding, &c. but contriving, &c. did not, nor would, *on, &c. next after the date of the said note*, pay the said sum of money therein specified, nor hath he at any time since paid the same, or the said several other sums of money, &c. (as usual.)

Str. 22. Rushton
v. Aspinall,
Doug. 654.
Bailey on Bills
and Notes, 57.

Declaration by
original against
an Executrix on
a promissory
note drawn by
testator in the
East Indies,
whereby he
promitted to pay
18 months after
the date, or
6 weeks after
his arrival in
England, 501.
Payee v. Executrix of Maker.

MIDDLESEX, to wit. Peter Rum, and Mary his wife, who is executrix of the last will and testament of W. A. deceased, were attached to answer unto R. J. in a plea of trespass on the case. And thereupon the said R. J. complains, that whereas the said W. A. *in his lifetime*, to wit, on, &c. at *Calcutta in the East Indies*, (where the said W. A. was then resident, from whence he intended to come to this kingdom of England,) to wit, at Westminster, in the said county of Middlesex, made his certain note in writing, commonly called a promissory note, his own proper hand being thereunto subscribed, bearing date the day and year aforesaid, and then and there delivered the said note to the said R. J.; by which said note he the said W. A. promised to pay to the said R. J. or his order, eighteen months after the date of the said note, *or six weeks after the arrival of him the said W. A. in England*, the sum of fifty-four pounds sterling for value received by him the said W. A.: by reason whereof, and by force of the statute in such case made and provided, the said W. A. became liable to pay to the said R. J. the said sum of money in the said note specified, according to the tenor and effect of the said note; and being so liable, he the said W. A. in consideration thereof, afterwards, to wit, on, &c. at, &c. undertook, and then and there faithfully promised the said R. J. to pay him the said sum of money in the said note specified, according to the tenor and effect of the said note. And the said R. J. avers, that although the said W. A. afterwards, in his lifetime, to wit, on, &c. arrived in England from Calcutta, to wit, at Westminster aforesaid: Yet the said W. A. *in his lifetime*, and the said Peter, and Mary his wife, executrix as aforesaid, *since his death*, not regarding the said promise and undertaking of the said W. A. so by him in manner and form aforesaid made, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said R. J. in this behalf, the said W. A. did not *at the end of six weeks after such his*

Averment that
testator arrived
in England;

his arrival in England as aforesaid, nor at the end of eighteen months from the date of the aforesaid note, or at any other time whatsoever in his lifetime, pay, nor have the said Peter and Mary his wife, who is such executrix as aforesaid, nor hath either of them, since the death of the said W. A. hitherto paid the said sum of money in the said note specified, or any part thereof, to the said R. J. (although to do this he the said R. J. requested the said W. A. in his lifetime, to wit, at the end and expiration of the said six weeks next after his aforesaid arrival in England, and afterwards, and also at the end and expiration of the said eighteen months from the date of the said note; and also the said Peter and Mary, executrix as aforesaid, since the death of the said W. A. to wit, on, &c. and often afterwards, to wit, at, &c.) but they, or any or either of them, to do this have, and each of them hath hitherto wholly refused, and the said Peter and Mary his wife, executrix as aforesaid, still refuse to do; and the said sum of fifty-four pounds in the said note specified, and every part thereof, still remains wholly unpaid to the said R. J. either by the said W. A. in his lifetime, or by the said Peter, and Mary his wife, executrix as aforesaid, since his death, to wit, at, &c. in, &c. And whereas the said W. A. in his lifetime, to wit, on, &c. at C, in the E. I. (where the said W. A. was so, as aforesaid, resident, and from whence he intended to come to England as aforesaid,) to wit, at, &c. in, &c. made, &c. commonly called, &c. his own proper, &c. bearing date the day and year aforesaid, and then and there delivered the said last-mentioned note to the said R. J.; by which said last-mentioned note he the said W. A. promised to pay, &c. &c.: by reason whereof, and by force of, &c. he the said W. A. became liable, &c. And the said R. J. in fact further saith, that although the said W. A. in his lifetime, to wit, on, &c. arrived in England from C. aforesaid, to wit, at, &c.; yet the said W. A. in his lifetime, and the said Peter and Mary his wife, executrix as aforesaid, not regarding, &c. but contriving, &c. did not, at the expiration of six weeks after his arrival in England, or at any other time whatsoever, pay, nor have nor hath the said Peter and Mary his wife, executrix as aforesaid, or either of them, since his death, paid the said sum of money in the said last-mentioned note specified, or any part thereof, to the said R. J. although to do this he the said R. J. requested the said W. A. in his lifetime, at the end and expiration of six weeks after his aforesaid arrival in England, and afterwards; and also the said Peter and Mary his wife, executrix as aforesaid, since the death of the said W. A. to wit, at, &c. and often afterwards, to wit, at, &c.; but, &c. (as in first Count). And whereas the said W. A. in his lifetime, to wit, on, &c. at Westminster in the said county of Middlesex, made, &c. his own proper, &c. and then and there delivered, &c.; by means of which said last-mentioned note he the said W. A. promised to pay to the said R. J. or order, eighteen months after the date thereof, fifty-four pounds sterling for value received by him the said W. A.: by reason whereof, and by force of, &c. became liable,

and request at the expiration of six weeks, and also at the expiration of 18 months.

2d Count on testator's promise six weeks after arrival only.

3d Count, 18 months after date only.

liable, &c.; and being so liable, &c. undertook, &c. (Money had and received; in simul computasset; and common conclusion.)

V. LAWES.

Declaration on a promissory note, *Paye v. Maker*, where there was a subscribing witness.

(a) 35. G. 3. c. 51. l. 2. 27. G. 3. c. 30. f. 2. made perpetual by 27. G. 3. c. 18.

FOR that whereas the said defendant heretofore, to wit, on, &c. (a) *in a certain place called Clifford's Inn*, to wit, at, &c. in, &c. according to the *form of the statute* (1) in such case made and provided, made his certain note in writing, commonly called a promissory note, bearing date the day and year afore said, and signed by him the said defendant *in the presence of one A. B. a subscribing witness*, who, in due manner, and according to the form of the statute in such case made and provided, attested such signature; and thereby, *twenty-one days after the date of the said note*, promised to pay to the said plaintiff, (by the name of, &c. of, &c. cabinet-maker, being *the then place of abode* of the said plaintiff, *to whom or to whose order* the money contained in the said note was to be paid,) or his order, the sum of four pounds for value received, and then and there delivered the said note to the said plaintiff: by reason whereof, and by force of the statute in such case made and provided, he the said defendant became liable, &c.; and being so liable, &c.

V. LAWES.

(a) The parts in italic are the requisites by the act for any sum under five pounds.

Declaration in the Exchequer by the Assignee of an insolvent debtor, on a promissory note, payable by instalments.

E. GIBSON, assignee of the debts which were of J. T. an insolvent debtor, according to the form of an act of parliament made at Westminster, at the session of parliament held at Westminster on the first of February in the tenth year of the reign of the lord the present king, intituled, "An act for the relief of insolvent debtors," cometh before the barons of this Exchequer, on, &c. *in this Term*, by A. B. his attorney, and complains by bill against William Carus, present here in court *the same day*, on a plea of trespass on the case; for that whereas the said William, *after the first day of May, A. D. 1705*, to wit, on, &c. at, &c. in, &c. made his certain note in writing, commonly called a promissory note, with his own hand subscribed, bearing date the same day and year last mentioned, and the same note to the said J. T. then and there delivered; and by the same note promised to pay to the said J. T. by the name of J. T. or order, the *sum of four pounds* value received, upon demand, as follows, *to be paid quarterly four shillings and fourpence a quarter*, till the said sum of four pounds should be paid: by reason whereof, and also by *force of the statute* in such case made and provided, the said William became liable to pay to the said J. T. the said sum of money mentioned in the said note, according to the tenor and effect of the same note; and being so liable, the said William, in consideration thereof, afterwards, to wit, on, &c. at, &c. in, &c. undertook, and then and there faithfully promised the said J. T. to pay him the said sum of money,

ney, according to the tenor and effect of the said note. And the said E. G. further says, that the said J. T. was actually a prisoner in the gaol of the said town and county, at the suit of the said E. G. on the first of January 1736, and so continued until the time of his discharge hereafter mentioned; and that by virtue of the said act of parliament, at the general quarter sessions of the peace held at the town of, &c. by adjournment, in and for the said town and county of the said town, on, &c. before A. B. and others their companions, his majesty's justices assigned to keep the peace in and for the said town and county, and also to hear and determine divers felonies, trespasses, and other offences committed in the said town and county, he the said J. T. was duly discharged, according to the said act of parliament: and the said E. G. further says, that eight shillings and eightpence, parcel of the said sum of four pounds last mentioned, and no more, was paid to the said J. T. before his said discharge, and that the residue of the said debt, immediately after the discharge of the said J. T. became and was vested by virtue of the said act of parliament in J. D. gentleman, then, and from thenceforth hitherto, being clerk of the peace of and for the said town and county; and the said residue of the said debt, being three pounds eleven shillings and fourpence, or any part thereof, not being paid, afterwards, that is to say, on, &c. the said residue of the said debt, by virtue of the said act of parliament, was duly assigned by the said J. D. then being clerk of the peace of and for the said town and county, to the said E. G. according to the said act of parliament, that is to say, at the town and county aforesaid; whereof the said W. afterwards, to wit, on, &c. there had notice; whereby, and by reason of the premises, the said William became liable to pay the said residue of the said debt at the times appointed by the said note for the payment thereof: and although the said William, by reason of the premises, ought to have paid to the said E. G. before the tenth day of May 1740, one pound ten shillings and fourpence, part of the said three pounds eleven shillings and fourpence; yet the said William, not regarding his said promise so made as aforesaid, but contriving, &c. the said E. G. in this behalf, hath not paid to the said E. G. the said sum of one pound ten shillings and fourpence, part of the said three pounds eleven shillings and fourpence, or any part thereof, although often requested, &c. And whereas also the said William, on, &c. at, &c. was indebted to the said E. G. as assignee in form aforesaid, in the further sum of fifty pounds for money received to his use; yet, &c.

Averment that the payee was actually in custody, on, &c. and on an adjournment day of sessions;

was duly discharged; and that 8s. 8d. only (part) was paid to him whilst such prisoner;

that the residue was assigned to the clerk of the peace.

One of the instalments due.

Count by assignee for money had and received,

FOR that whereas, on, &c. at, &c. one A. B. was cashier and servant of the Royal African Company, and by the said company then and long before that time usually intrusted to make and sign promissory notes for and on behalf of the said company; and the said A. B. so being servant and intrusted as aforesaid, he the said A. B. on, &c. at, &c. for the said company made a certain

Declaration on a promissory note by Payee, given by the cashier of a company.

promissory note, bearing date on the same day and year last mentioned, with the hand and name of the said A. B. thereto subscribed; and by the said note the said A. B. did acknowledge *to have borrowed and received* of the said P. the sum of seven hundred pounds *for the use of the said company*, by the name of The Royal African Company of England, to be *repaid with interest on demand*: by reason whereof, and also by *force of the statute* in such case made and provided, the said company became liable to pay to the said P. the said sum of money contained in the said note; and being so liable, the said company, in consideration thereof, afterwards, to wit, on, &c. at, &c. undertook, and then and there faithfully promised the said P. to pay him the said sum of money in the said note contained, according to the tenor and effect of the said note.

Præcipe for declaration by original on a promissory note at the suit of Executors.

LONDON, *ff.* If W. P. and R. E. executors of the last will and testament of the deceased, make you secure, then put, &c. R. B. late of, &c. that he be before our lord the king from the day of Easter, in fifteen days, where-soever, &c. to shew, &c. for that whereas the said R. B. in the lifetime of the said H. S. to wit, on, &c. made and issued his certain note in writing, commonly called a promissory note, bearing date the day and year aforesaid, and thereby to have acknowledged to have borrowed and received of the said H. S. (by the name of Mr. H. S.) two hundred pounds, which he the said R. B. by his said note then and there promised to pay unto the said H. S. and then and there delivered the said note to the said H. S.: whereby, and by means of which said several premises, and by force of the statute in such case made and provided, the said R. B. became liable to pay to the said R. S. in his lifetime the said sum of money in the said note specified, when he should be thereto afterwards requested; and being so liable, he the said R. B. in consideration thereof, afterwards, in the lifetime of the said H. S. to wit, on, &c. undertook, &c. the said H. S. to pay him the said sum of money in the said note specified, when he should be thereto afterwards requested. (2d Count, money lent and advanced; 3d Count, had and received; account stated; and following conclusion.) Yet the said R. B. not regarding his said promise and undertaking so made by him as aforesaid, but contriving, &c. the said W. S. in his lifetime, and the said P. and E. executors as aforesaid, since his death, in this behalf, hath not paid the said several sums of money in those promises and undertakings mentioned, or any or either of them, or any part thereof, to the said H. S. in his lifetime, or to the said P. and E. executors as aforesaid, or either of them, since his death, although to pay the same he the said R. B. was requested by the said H. S. in his lifetime, to wit, on, &c. and by the said P. and E. since his death, to wit, at, &c. but he so to do hath wholly refused and neglected, and still refuses to pay the same to the said P. and E. executors as aforesaid, to the damage of them the said P. and E., as such executors, of one hundred

dred and sixty pounds, as it is said. (In declaring on this original, there must be a *profert* of the executors testamentary at the end of the declaration.)

G. P. by C. H. his attorney, complains against J. E. in a plea of trespass on the case, &c. for that whereas the said J. E. on, &c. at, &c. and *within the jurisdiction of this court*, by the name of J. E. made and signed his certain note in writing, commonly called a promissory note, bearing date the day and year aforesaid, and then and there promised to pay to one J. B. in the said note mentioned, or order, nine pounds for value received, in manner and under the condition following, that is to say, by and at the rate of two pounds two shillings in every month, monthly, until the whole should be discharged; and, in case of non-payment in any of the monthly instalments, the said note to be in force, and then and there delivered the said note to the said J. B.; and the said J. B. to whom or to whose order the payment of the said sum in the said note specified was to be made, afterwards, and before the payment of the said sum of nine pounds or any part thereof, to wit, on, &c. indorsed the said note, and by that indorsement appointed the contents of the said note to be paid to one J. B. H. and then and there delivered the said note so indorsed to the said J. B. H.; and the said J. B. H. to whom or to whose order the said sum of nine pounds in the said note mentioned was by virtue of the said indorsement so made thereon as aforesaid to be paid, afterwards, and before the payment of the said sum of nine pounds or of any part thereof, to wit, on, &c. indorsed the said note, and by that indorsement appointed the contents of the said note to be paid to the said G. P. and then and there delivered the said note, so indorsed as aforesaid, to the said G. P.; of which said several indorsements so made on the said note as aforesaid, he the said J. E. afterwards, to wit, on, &c. had notice: whereby, and by reason of which said several premises, and by force of the statute in such case made and provided, the said J. E. became liable to pay to the said G. P. the said sum of nine pounds in the said note mentioned, according to the tenor and effect of the said note, and the aforesaid indorsements thereof; and being so liable, he the said J. E. in consideration thereof, afterwards, to wit, on, &c. undertook, &c. the said G. P. to pay the said sum of nine pounds in the said note mentioned, according to the tenor and effect of the said note, and the aforesaid indorsements thereof. And the said G. P. in fact further says, that although the said J. E. paid the sum of two pounds two shillings, parcel of the said sum of nine pounds, and the first of the said monthly instalments in the said note mentioned, according to the tenor and effect of the said note: yet the said G. P. in fact further says, that after the said sum of two pounds two shillings had been and was so paid as aforesaid, and before the levying of the plaint of the said G. P. to wit, on, &c. two pounds two shillings of the residue of the said sum of

Declaration in the Palace Court upon a promissory note that was to be paid by monthly instalments where the first had been paid and no more.
ad: *Indorse v. Drawer.*

ad Count, stat-
ing second in-
dorsement to be
made after first
monthly pay-
ment made.

nine pounds in the said note specified, for the second of the said monthly instalments in the said note mentioned, becoming due and payable on, &c. became due, and was due and payable from the said J. E. to the said G. P. but that the said J. E. did not then and there pay the same, or any part thereof, to the said G. P. but then and there failed and made default therein, contrary to the tenor and effect of the said note; whereby the said note then and there became in force as to the whole of the then residue of the said sum of nine pounds therein specified; and such residue being a large sum of money, to wit, the sum of six pounds eighteen shillings, became and was forthwith due and payable from the said J. E. to the said G. P. to wit, at, &c. And whereas the said J. E. on, &c. and within, &c. by the name of J. E. made, &c. called, &c. bearing date, &c. and then and there promised to pay to the said J. B. or order nine pounds for value received, in manner and under, &c.; and in case of non-payment of any monthly instalment, the said last-mentioned note to be in force, and then and there delivered, &c.; and the said J. B. to whom, &c. was to be made, afterwards, and before the payment of the said sum of nine pounds in the said note specified, or of any part thereof, to wit, on, &c. indorsed the said note, and by that indorsement appointed, &c. and then and there delivered the said note so indorsed to the said J. B. H.; and the said J. B. H. to whom, &c. afterwards, and after the payment of the first monthly instalment of two pounds two shillings therein specified, but before the payment of the residue of the said sum of nine pounds therein mentioned, being the sum of six pounds eighteen shillings, or of any part thereof, to wit, on, &c. indorsed the said last-mentioned note, and by that indorsement appointed the residue of the said sum of money, in the said last-mentioned note specified, to be paid to the said G. and then and there delivered the said last-mentioned note, so indorsed as aforesaid, to the said G. P.; of which said several indorsements so made on the said last-mentioned note as aforesaid, the said J. E. afterwards, to wit, on, &c. had notice: whereby, and by reason of which said several premises, and by force of the statute in such case made and provided, the said J. E. became liable to pay to the said G. P. the said residue of the said sum of money in the said note mentioned, according to the tenor and effect of the said last-mentioned note, and of the aforesaid indorsements thereof; and being so liable, he the said J. E. in consideration thereof, afterwards, to wit, on, &c. undertook, &c. the said G. P. when, &c. to pay him the said residue of the said sum of money in the said last-mentioned note mentioned, according to the tenor and effect of the said last-mentioned note, and the aforesaid indorsements thereof. And the said G. P. in fact further says, that although the said sum of two pounds two shillings for the second of the said monthly instalments in the said last-mentioned note specified, became and was due and payable from the said J. E. upon the said twenty-ninth day of, &c.; yet the said J. E. did not then and there pay the said instalment or sum of two pounds two shillings, or any part thereof,

thereof, to the said G. P. but then and there failed and made default, contrary to the tenor and effect of the said last-mentioned note; whereby the said last-mentioned note became in force as to the whole of the then residue of the said sum of nine pounds therein specified, and such residue became and was forthwith due and payable from the said J. E. to the said G. P. to wit, at, &c. whereof the said J. E. afterwards, to wit, on, &c. had notice. (Add the common Counts; account stated; and common conclusion.)

LONDON, *ff.* If Isaac Linds make you secure, &c. then put, &c. Stephen Child, late of, &c. that he be before our lord the king on, &c. wheresoever to shew, &c. for that whereas heretofore, to wit, on, &c. at, &c. according to the custom of merchants, made and drew his certain bill of exchange, bearing date the day and year aforesaid, upon certain persons trading and using commerce by and under the style and firm of Sir Thomas Halifax and Co. and by the said bill then and there requested the said persons so using the said style or firm of, &c. to pay to one J.D.G. in the said bill named, by the name of, &c. or bearer, 50l. and then and there delivered the said bill, draft, or order to the said J. D. G.; and the said J. D. G. to whom, or to the bearer of which said bill, draft, or order, payment of the said sum of money in the said bill, draft, or order specified was to be made as last aforesaid, afterwards, and before the payment of the said sum of money in the said bill, draft, or order mentioned, or of any part thereof, to wit, on, &c. at, &c. according to the custom of merchants in that particular, delivered the said bill, draft, or order to the said plaintiff for a certain valuable and good consideration then and there by him paid and given, and constituted and appointed him the bearer of the said bill, draft, or order as aforesaid, to recover the said sum of money therein mentioned, as such bearer thereof. And the said plaintiff in fact further saith, that being such bearer of the said bill, draft, or order as aforesaid, he the said plaintiff afterwards, to wit, on, &c. in due manner presented the said bill, draft, or order, to the said persons so using the said style or firm of, &c. for payment of the money therein mentioned, unto him the said plaintiff, and they were then and there required to pay the same to the said plaintiff as such bearer of the said bill, draft, or order as aforesaid, according to the tenor of the said bill, draft, or order: but the said plaintiff avers, that the said persons so using, &c. did not, nor would any or either of them, when the said bill, draft, or order was so shewn and presented to them as aforesaid, or at any other time whatsoever, pay the said sum of money therein specified, or any part thereof, to him the said plaintiff, but, on the contrary thereof, then and there refused so to do, and therein wholly failed and made default; whereof the said defendant afterwards, to wit, on, &c. had notice: by reason whereof, and of the several other premises aforesaid, and by force of the custom and law of mer-

Præcipe for declaration by original on a Banker's cheque, &c. which was given by the defendant to one A.B. or bearer; A.B. transferred it over to plaintiff, who presented it for payment, but was refused, &c.

* Of a Banker's Cheque.

sd Count.

chants, the said defendant became liable, &c. ; and being so liable, &c. &c. And whereas heretofore, to wit, on, &c. according to the custom of, &c. made, &c. a certain *draft or order* for the payment of money, commonly called a *banker's cheque*, bearing date, &c. upon certain *bankers* then and there trading and using commerce by and under the style of, &c. and by the said *draft or order* then and there required the said bankers so using, &c. &c. to pay to the said J. D. G. by the name of, &c. &c. (Go on with this Count same as the last, only omitting the word "*bill*," Add all the common Counts.)

I Have drawn the above *præcipe* according to my instructions, and considered the case; and however hard it may be on the plaintiff, yet I am of opinion the action cannot be supported; for on looking into the *stock-jobbing* act of the 7. G. 2. c. 8. §. 1. all such contracts as that on which the cheque is suggested to have been given are declared to be absolutely *void*, and not merely *voidable*, and that to all intents and purposes whatever: being therefore so void in itself, and that to every purpose, it was incapable of any transfer or delivery over, so as to put the person to whom it was so *delivered* in a better or other situation than he in whose favour it was originally drawn, and who afterwards delivered it over. Were the point quite a new one, however, the argument made use of in the instructions might be urged with much propriety, and of course with a prospect of success; but I fear the recent case of *Lowe and others and Walker*,

Doug. 708. and the recognised one of *Bowyer and Bampton, 2. Str. 1155.* on the statute of usury and gaming, and in which a note or bill on either of those considerations are declared to be invalid, even in the hands of *innocent underfees*, on good and *bonâ fide* considerations, will be considered as determining the question. Indeed, in my own opinion, they do; but then there is generally so great a difficulty in making out a case of the kind in evidence, that it may be perhaps worth the plaintiff's while to take the chance which a case of the sort may afford him; but if, on the other hand, the draft can be clearly shewn to have been given on such illegal consideration, then I cannot advise the proceeding on it: at all events, however, he is not without his remedy against J. D. G. of the person from whom he received the cheque, but may recover back the consideration money for it, in an action for money had and received. V. LAWES.

Declaration at suit of the husband alone upon a promissory note made to the wife whilst sole, but payable by instalments at a time happening after the marriage, for five out of seven of the instalments accrued during the marriage.

WARWICKSHIRE, to wit. John Whittaker complains of Samuel Hill, being, &c. in a plea of trespass on the case, &c. for that whereas the said Samuel heretofore, to wit, on the twenty-fifth day of March in the year of Our Lord 1788, at Birmingham in the county of Warwick, made his certain note in writing, commonly called a promissory note, subscribed with his own proper hand, and bearing date the day and year aforesaid, and thereby promised to pay to one Sarah Toy, by the name and description of Mrs. S. T. ten pounds ten shillings, at different instalments, that is to say, one guinea at the end of every three months from the date thereof, until the whole sum should be paid, for value received, and then and there delivered the said note to the said Sarah Toy; by reason whereof, and by force of the statute in that case made and provided, the said Samuel became liable to pay to the said S. T. the said sum of money in the said note mentioned, according to the tenor and effect of the said note. And the said John in fact says, that after the making of the said note, and before

the

the whole of the money therein mentioned became payable, to wit, on the thirty-first day of October in the year aforesaid, to wit, at B. aforesaid, in the county aforesaid, he the said John intermarried with the said S. T. who then and there became, and was and still is, the lawful wife of him the said John; and he the said John then and there became and was and yet is lawfully possessed of the said note. And the said John further says, that after his said intermarriage, and before the exhibiting of the bill of the said John, to wit, on the twenty-fifth day of December in the year of Our Lord 1790, at B. aforesaid, in the county aforesaid, a great part of the said sum of money in the said note specified, to wit, the sum of five pounds five shillings, for five of the said instalments in the said note mentioned, accrued since the said intermarriage, and was due and payable from the said Samuel upon and according to the tenor and effect of the said note; of which said premises the said Samuel then and there had due notice: whereby, and by reason of which said several premises, he the said Samuel became liable to pay to the said John the said sum of five pounds five shillings; and being so liable, he the said Samuel, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at B. aforesaid, in the county aforesaid, undertook, and faithfully promised the said John to pay him the said sum of money, when he the said Samuel should be thereto afterwards requested. And whereas the said Samuel heretofore, to wit, on the twenty-fifth day of March in the year of Our Lord 1788, at B. aforesaid, in the county aforesaid, made his certain other note in writing, commonly called a promissory note, subscribed with his own proper hand, and bearing date the day and year last aforesaid, and thereby promised to pay to the said S. T. by the name and description of Mrs. S. T. ten pounds ten shillings, at different instalments, that is to say, one guinea every three months from the date thereof until the whole should be paid, for value received, and then and there delivered the said last mentioned note to the said S. T.; by means whereof, and by force of the statute in such case made and provided, the said Samuel became liable to pay to the said S. the said sum of money in the said note specified, according to the tenor and effect thereof. And the said John in fact says, that after the making of the said last mentioned note, and before the said sum of money therein mentioned became due, according to the tenor and effect thereof, to wit, on the said thirty-first day of October in the said year of Our Lord 1788, at B. aforesaid, in the county aforesaid, he the said John intermarried with the said S. T. who then and there became, and was and still is, the lawful wife of the said John. And the said John in fact further saith, that after his said intermarriage, and before the exhibiting of the bill of the said John, to wit, on the day of in the year of Our Lord 17 at B. aforesaid, in the county aforesaid, divers, to wit,

ad Count on a promise to pay the husband all the arrears in consideration of forbearance.

of the said instalments in the said last mentioned note specified, fill this blank with the day on which the preceding instalments became due. If there has been any promise of payment by the def. If not, is pay be filled with the day when the 5th instalment became due.

cified, became due and payable, according to the tenor and effect of the said note; whereof the said Samuel then and there had notice: in consideration whereof, and also in consideration that the said John would then and there *forbear and give day of payment* to the said Samuel for the same for a reasonable time, he the said S. undertook, and then and there faithfully promised the said John to pay him the said several instalments so become due as aforesaid. And the said John in fact says, that he, confiding in the said last mentioned promise and undertaking of the said Samuel, did there-upon forbear and give day of payment to the said S. for the said several instalments, amounting in the whole to a large sum of money, to wit, the sum of pounds, for a long and reasonable time, to wit, from the time of making the said last mentioned promise and undertaking till the time of exhibiting the bill of the said John in this behalf, to wit, at B. aforesaid, in the county aforesaid, &c. (Counts for money had and received; money paid; account stated; and common conclusion.)

Now that I have drawn this declaration, I cannot help feeling a little dubious as to the strict propriety of the form of action. I have carefully contrasted it with all the cases to be found on the point, and find that it goes further than any of them, in attempting to *just port a demand by the husband alone, upon an actual contract made with the wife BEFORE the marriage, without any express promise to the husband AFTER.* In all the authorities I have met with, where the husband has sued alone on a contract with the wife whilst sole, he has alleged an express promise to himself after the marriage, founded on the former. But we have here attempted to raise an *implied assumpsit* in law to the husband alone out of a security given to the wife before coverture, on the ground of its not be-

ing payable till after. This reason for it may be given, that by the marriage the security vests in possession in the husband alone, and the money not becoming due till afterwards, connects the action with the thing on which it founds itself, now the husband's sole property, and thereby gives him an election to sue alone. In this I think there is something like law, but it is perfectly new, and unsupported by decisions; for which reason I have added a 2d Count, stating a promise to the husband in consideration of *forbearance*; which, if supported by evidence, will be good; if not, and plaintiff should obtain a verdict without any objection being taken in pleading to the first Count, I would advise him to enter up his judgment on the Count for money had and received.

T. BARROW.

Declaration
against Ad-
ministrator
(during the mi-
nority of the in-
testate's infant
son) on a pro-
missory note.
(Intestate Payee
v. Drawer.)

SOMERSETSHIRE, to wit. John James, administrator of all and singular the goods, chattels, and credits which were belonging to Betty James deceased, at the time of her death, who died intestate during the minority of John James, an infant, complains of Charles Symes, being in the custody, &c. for that whereas the said Charles Symes, in the lifetime of the said Betty James, to wit, on the thirty-first day of August in the year of Our Lord 1784, at Radstock in the county of Somerset aforesaid, made his certain note in writing, commonly called a promissory note, bearing date the day and year aforesaid, and then and there delivered the said note to the said Betty James; by which said note the said Charles Symes promised to pay to the said Betty James, by the name and description of Mrs. Betty James, or order, the sum

sum of four hundred and thirty-seven pounds, with interest for the same, after the rate of three pounds fifteen shillings in the hundred pounds by the year, for value received; by reason whereof, and by force of the statute in such case lately made and provided, the said Charles Symes became liable to pay to the said Betty James the said sum of money, with the interest in the said note contained, when he the said Charles Symes should be thereto afterwards requested; and being so liable, he the said Charles Symes, in consideration thereof, afterwards, to wit, on the day and year aforesaid, at Radstock aforesaid, in the county aforesaid, undertook, and to the said Betty James then and there faithfully promised to pay her the said sum of money, with the interest for the same, in the said note contained, when he the said Charles Symes should be thereunto afterwards requested. And whereas also the said Charles Symes, afterwards, in the lifetime of the said Betty James, to wit, on the same day and year aforesaid, at, &c. aforesaid, was indebted to the said Betty James in other one thousand pounds, of, &c. for the use and occupation of several closes of ground, to wit, fifty acres of land, fifty acres of meadow, and fifty acres of pasture, with the appurtenances, of the said B. J. situate, lying, and being in the parish of R. aforesaid, in the county aforesaid, by the said C. S. and at the special instance and request of the said C. S. by the permission of the said B. J. for a long time, before that time, had, held, used, occupied, possessed, and enjoyed; and being so indebted, &c. undertook, &c. to pay her the said last mentioned sum of money, when, &c. (*Quantum meruit* for the use and occupation of fifty other acres of land, fifty other acres, &c.; and that the said C. S. by virtue of the said last mentioned permission, &c. had held, &c. Counts for money lent, and on account stated, same as for use and occupation.) And whereas also the said C. S. afterwards, and after the death of the said Betty James, to wit, on the tenth day of May A. D. 1793, at R. aforesaid, in the county aforesaid, was indebted to the said John James, as such *administrator* as aforesaid, in other one thousand pounds, of like, &c. for the use and occupation of several other closes of ground, to wit, fifty acres of other land, &c. &c. of the said John James, as such *administrator* as aforesaid, situate, &c. by the said C. S. at the special instance, &c. of the said C. S. by the permission of the said John James as such *administrator* as aforesaid, for a long time, before that time, had, held, &c. and being so indebted, &c. undertook to the said John James, as such *administrator* as aforesaid, then and there, &c. [Count on a *quantum meruit*.] Yet the said C. S. hath not paid the said several sums of money, or any part thereof, either to the said B. J. in her lifetime, or to the said John James, the plaintiff, since the death of the said Betty James, (to which said John James, the plaintiff, *administration* of all and singular the goods and chattels, rights and credits, which were belonging to the said Betty James at the time of her death, who died intestate on the twentieth day of March A. D. 1792, at R. aforesaid, in the county aforesaid,

2d Count for use and occupation during the intestate's lifetime.

Quantum meruit.

For use and occupation, and on quantum meruit in Administrator's own right.

Conclusion by Administrator durante minority of an infant.

Profer.

Averment.

said, by Charles by divine permission bishop of Bath and Wells, in due form of law, was granted, during the minority of the said *John James the minor*,) although so to do the said C. S. afterwards, by the said B. J. in her lifetime, and by the said John James, the plaintiff, after the death of the said Betty James, was duly requested; but to pay the same to them, or either of them, the said C. S. hath hitherto wholly refused, and still doth refuse: whereupon the said J. J. saith that he is injured, and hath sustained damage to the amount of two thousand pounds, and therefore he brings his suit, &c. And he brings here into court the letters of administration of the said bishop, which sufficiently prove to the Court here the granting of administration aforesaid to the said J. J. *the plaintiff* in form aforesaid, the date whereof is the same day and year in that behalf aforesaid: *with this*, that the said J. J. will verify, that the said J. J. the minor above named is still within the age, to wit, at R. aforesaid. Pledges, &c.

V. GIBBS.

BY FIRST INDORSEE.

Indorse against the Indorser.

(1) Ann. 288.

(2) Lord Raym. 345. 12. Mod. 312.

FOR that whereas one *A. B.* (the drawer,) heretofore, to wit, on the fourth day of December, A.D. 1789, at, &c. made and signed his certain note in writing, commonly called, &c. bearing date, &c. and thereby promised to pay to the said *C. D.* (the payee, indorser, and defendant) by the name of, &c. (1), or order, &c. and then and there *delivered* the said note to the said C. D.; and the said C. D. (a) *to whom* or to whose order the said sum of money in the said note specified was to be paid, afterwards, and before the payment of the said sum of money, or of any part thereof (b), to wit (2), on the (c) day and year aforesaid, at, &c. aforesaid,

(a) When the note is payable (d) *to the order* of the indorser merely, and not *to him or order*, you omit the words *to whom*, as being inconsistent with the tenor of the note.

(b) We frequently find this allegation carried further than it is here by the averment of the (c) indorsement's being made "before the expiration of the time appointed for payment of the note;" but it is neither necessary nor prudent to declare so. It seems to have arisen, however, from a notion, that a note cannot (f) *be indorsed* after the day of payment. For any unfair purposes, as to deprive the drawer of the benefit of a set-off,

and the like, it certainly cannot; but if the negotiation be *bona fide*, and in the ordinary course of trade, it may. The imprudence of declaring with the averment in question arises from its frequent variance from the fact, which, according to the opinion of Holt, (in an action on bill of exchange,) is fatal (g). See Cunningham. Law of Bills, &c. 83, 4. By declaring generally, (as is here done,) the time of the indorsement is immaterial; but by declaring with the averment in question, it is rendered *material*.

(c) As the time of the indorsement is immaterial, except when plaintiff confesses himself by the allegations alluded

(d) Carth. 403. 2. Show. 8.

(e) Doug. 496. where one indorses a note before sum and time of payment mentioned in note.

(f) See 3. T. Rep. 80 & 3. n. a.

(g) Jackson and Pigot, 1. Ld. Raym. 364. S. C. 1. Salk. 127. Carth. 439. 12. Mod. 211. Decided contra by Lord Kenyon at N. P. 1789.

aforesaid, *indorsed* the said note, and by that indorsement appointed the money in the said note specified to be paid to the said E. F. (the plaintiff and indorsee,) and then and there *delivered* the said note, so indorsed, to the said E. F. : and the said E. F. avers (d) that at the (e) *end and expiration of the time appointed for payment of the money in the said note specified*, to wit, on the (f) (3) day of in the year aforesaid, at, &c. aforesaid, the said note was shewn (4) and *presented* to the said A. B. (the drawer,) for payment of the money therein mentioned; and he was then and there requested to pay the same to him the said E. F. (the plaintiff and indorsee,) according to the tenor and effect of the said note, and of the said indorsement so thereon made as aforesaid; but the said A. B. (the drawer) did not, when the said note was shewn and presented to him as aforesaid, nor at any other time whatsoever, pay the money therein mentioned, or any part thereof, to him the said E. F. (the plaintiff,) but wholly refused so to do, and therein wholly failed and made default; whereof the said C. D. (defendant and indorsee) afterwards, to wit, on the day and year last aforesaid, at, &c. aforesaid, had notice; and thereby, and by reason of the several other premises aforesaid, and by force of the statute, &c. became liable to pay, &c. *when he should be thereto afterwards requested*; and being so liable, &c. (Assumpsit accordingly.)

Indorsement,
Doug. 611.

(3) Rushton v. Aspinall, Doug. 654; and see cases on presentment, ante pages (4) and Rumball v. Ball, 10. Mod. 38. 2. Show. 180. Bailey on Bills, &c. §9.

to in the note (d), so you may state it to have been made on the day of the date of the note; but if you declare on an indorsement made after the day of payment, you must of course vary the day, and lay it some time subsequent to such period.

(d) This averment is absolutely material, as defendant only undertook to pay upon the default of the drawer, and it is equally necessary, whether the indorsement be *after* the day of payment or *before*.

(e) If the declaration be on an indorsement made *after* the day of payment, you may vary this expression, and state the presenting the note to be *after the making*

of the indorsement, and not at the end of the time appointed, &c. to wit, on the day and year last aforesaid.

(f) The day when the note became due, including the three days of grace, (h) are not, it should seem, demandable in right in the case of promissory notes; but as the custom is to give them, and the facts of the case are consistent with the allegation, so we recognize it in pleading.

(h) Appleton v. Sweetapple, B. R. M. 23. G. III. Str. 416. 1175. 248. 4159. 416. 910. Ld. Raym. 928. Salk. 132. Bl. 1. Ld. Raym. 743. 1076. 2. R. Com. 469.

FOR that whereas the said C. D. to wit, on the fifteenth day of September A. D. 1789, at Westminster in the county of Middlesex, made his certain note in writing, commonly called a promissory note, his own proper hand being thereunto subscribed, bearing date the same day and year aforesaid, and then and there delivered the said note to E. F. and G. being then and there *partners and joint dealers* together in the way of their trade and commerce; by which said note he the said C. D. then and there promised to pay after the date thereof, to the said E. F. and G. (by the name and addition of Messrs. E. F. and G.) or their joint

1st Indorsee against Maker on a note payable to three partners, and indorsed by one of them.

Indorsement.

joint order, the sum of eighty pounds, for value received; and the said *E. for himself, and the said F. and G. his said partners*, to which said *E. and F. and G.* or their joint order the payment of the said sum of money, in the said note specified, was by the said note to be made, after the making the said note, and before the payment of the said sum of money in the said note specified, to wit, on the same day and year aforesaid, at, &c. aforesaid, *indorsed* the said note, *his own proper hand writing being to such indorsement subscribed*; by which said indorsement he the said *E. for himself, and the said F. and G. his said partners*, then and there ordered and appointed the said sum of money, in the said note specified, to be paid to the said *A. B.* and then and there *delivered* the said note, so indorsed as aforesaid, to the said *A. B.*; of which said indorsement so made on the said note as aforesaid, the said *C. D.* afterwards, to wit, on the same day and year aforesaid, at, &c. aforesaid, had notice: by means whereof, and by force of the statute in such case made and provided, he the said *C. D.* became liable to pay to the said *A. B.* the said sum of money in the said note specified, according to the tenor and effect of the said note, and of the said indorsement so made thereon as aforesaid; and being so liable, he the said *C. D.* in consideration thereof, afterwards, to wit, on the same day and year aforesaid, at, &c. aforesaid, undertook, and then and there faithfully promised the said *A. B.* to pay him the said sum of money in the said note specified, according to the tenor and effect of the said note, and of the said indorsement so made thereon as aforesaid,

Declaration in the Borough Court on a promissory note to be paid by instalments, *Indorse v. Maker.*

CHARLES CHAUNGBOLD, by *A. Musgrave* his attorney, complains of *Richard Lewis* of a plea of trespass on the case; for that whereas the said *Richard Lewis*, on the twentieth day of April in the year of Our Lord 1774, at the borough of Southwark in the county of Surrey, *and within the jurisdiction of this court*, made his certain note in writing, commonly called a promissory note, subscribed with his own proper hand, bearing date the same day and year aforesaid, and then and there *delivered* the said note to one *Joseph Waldron*, and thereby then and there, on demand, promised to pay to the said *Joseph*, or order, the sum of three pounds, for value received by the said *Richard*, the same to be paid at one shilling and sixpence by the week, from the date of the said note, but, in neglect of any one payment of the said note, *to be on demand*; and the said *Joseph*, to whom or to whose order the payment of the said sum of three pounds in the said note mentioned was to be made, afterwards, and before the payment of the said sum of money mentioned in the said note, or of any part thereof, to wit, on, &c. at, &c. within, &c. *indorsed* the said note, his own proper hand being thereto subscribed, and thereby then and there appointed the contents of the said note, so indorsed, to be paid to the said *Charles*; whereof the said *Richard* then and there had notice: and by reason whereof, and by force of the statute in that

Indorsement.

that case made and provided, the said Richard became liable to pay to the said Charles the said three pounds contained in the said note, according to the tenor and effect of the said note; and being so liable, he the said Richard, in consideration thereof, afterwards, to wit, on, &c. at, &c. *within, &c.* undertook, and then and there faithfully promised the said Charles to pay him the said sum of money contained in the said note, according to the tenor and effect of the said note. And the said Charles in fact says, that the said Richard did not pay to the said Joseph before the said indorsement, or to the said Charles since the said indorsement, the first payment of one shilling and sixpence, which became due by virtue of the said note *on the sixth day of May* in the year aforesaid, &c. *within, &c.* but therein then and there wholly failed and made default, whereby the said whole three pounds mentioned in the said note, then and there became due and payable at, &c. *within, &c.*; of all which said premises the said Richard afterwards, to wit, *on the seventh day of May*, at, &c. *within, &c.* had notice, and was then and there required by the said Charles to pay him the said whole three pounds, mentioned in the said note, and which the said Richard then and there ought to have done, according to the tenor and effect of the said note, and of his promise and undertaking aforesaid: yet the said Richard, not regarding, &c. but contriving, &c. hath not yet paid, &c. (although, &c.) but to pay the same to the said Charles hath hitherto wholly refused, and still refuses. (Another Count on the note in the common way; money had and received; and common conclusion to the two last Counts.)

Before the Mayor and Aldermen in the Chamber of the Guildhall of the City of London.

JOHN HENRY BROME, by A. B. his attorney, complains against G. F. and M. his wife, (which said M. *doth sell merchandize*, and trade with merchandize in the art of a milliner within the city of London,) in a plea of trespass on the case; for that whereas, on, &c. at, &c. the said M. (*then and now being the wife of the said G. F. and then and now trading and merchandizing within the said city, in the art aforesaid, alone, and without her said husband, according to the custom of the said city,*) made her certain note in writing, commonly called a promissory note, subscribed with her own proper hand, and bearing date the same day and year aforesaid, and then and there *delivered* the said note to one W. S. by which said note the said M. six months after the date of the said note, promised to pay to the said W. S. by the name of, &c. or order, the sum of twenty-two pounds value received: and the said twenty-two pounds being wholly unpaid, he the said W. S. on, &c. at, &c. by a certain *indorsement* in the said note by him made, and with his own proper hand thereto subscribed, ordered and appointed the contents of the said note to be paid to the said plaintiff, and then and there *delivered* the said note, so indorsed, to the said plaintiff; whereof the said M. afterwards, to wit,

Declaration in the City Court by an *Indorsee* against the *Husband and Wife* on a promissory note, made by the wife as a sole trader, according to the custom of London.

Indorsement.

wit, on, &c. at, &c. had notice: by means of which premises, and also by force of the statute in such case made and provided, the said M. became liable to pay to the said plaintiff the said twenty-two pounds in the said note mentioned, according to the tenor and effect of the said note, and the said indorsement so made thereon as aforesaid; and being so liable, she the said M. &c. undertook, &c.

1. Blackstone, Rep. 574. it is said by Lord Mansfield, "Any action that is brought against the wife by her creditors must be in the City Courts." But the custom being a good one, use may be made of it in any court in the kingdom.

By *Indorse*,
where the *Execu-*
trix of Payee
indorsed after
testator's death.

Indorsement.

LONDON, to wit. G. H. complains of R. L. being, &c.; for that whereas the said R. L. on, &c. at, &c. in, &c. made his certain note in writing, commonly called a promissory note, subscribed with his own proper hand, bearing date the same day and year aforesaid, and then and there delivered the said note to one A. B. and thereby, four months after date, promised to pay to the said A. B. (by the name of, &c.) or order, the sum of six pounds; and the said A. B. to whom or to whose order the payment of the said sum of money mentioned in the said note was to be made, afterwards, and before the payment of the said sum of money mentioned in the said note, or any part thereof, and before the time appointed by the said note for the payment thereof, to wit, on, &c. at, &c. died, having first made his last will and testament in writing, and thereby appointed his wife M. B. *executrix* thereof; and the said sum of money mentioned in the said note being wholly unpaid, she the said M. B. therefore afterwards, to wit, on, &c. at, &c. duly proved the said last will and testament of the said A. B. and took upon herself the charge and burthen of the execution thereof: and the said M. B. afterwards, to wit, on, &c. at, &c. as executrix in form aforesaid, the said sum of money mentioned in the said note being then and there wholly unpaid, *indorsed* the said note, her own proper hand-writing being thereunto subscribed; and by that indorsement she the said M. as executrix as aforesaid, appointed the contents of the said note to be paid to the said plaintiff, and then and there *delivered* the said note, so indorsed, to the said plaintiff; of all which said premises the said Richard afterwards, to wit, on, &c. at, &c. had notice: and by reason of the premises, and by force of the *statute* in such case made and provided, he the said Richard became liable to pay to the said plaintiff the said sum of money mentioned in the said note, according to the tenor and effect of the said note, and of the said indorsement so made thereon as aforesaid; and being so liable, &c. undertook, &c. (Add the common money Counts; breach.)

Declaration on a
promissory note,
which was in-
dorsed by the

LONDON, to wit R. M. v. W. P. for that whereas the said W. P. on, &c. at, &c. made his certain note in writing, commonly called a promissory note, subscribed with his own proper hand, bearing date the same day and year aforesaid, and then and there delivered the said note to one A. B. and thereby, four months after date, promised to pay to the said A. B. (by the name of, &c.) or order, the sum of six pounds; and the said A. B. to whom or to whose order the payment of the said sum of money mentioned in the said note was to be made, afterwards, and before the payment of the said sum of money mentioned in the said note, or any part thereof, and before the time appointed by the said note for the payment thereof, to wit, on, &c. at, &c. died, having first made his last will and testament in writing, and thereby appointed his wife M. B. *executrix* thereof; and the said sum of money mentioned in the said note being wholly unpaid, she the said M. B. therefore afterwards, to wit, on, &c. at, &c. duly proved the said last will and testament of the said A. B. and took upon herself the charge and burthen of the execution thereof: and the said M. B. afterwards, to wit, on, &c. at, &c. as executrix in form aforesaid, the said sum of money mentioned in the said note being then and there wholly unpaid, *indorsed* the said note, her own proper hand-writing being thereunto subscribed; and by that indorsement she the said M. as executrix as aforesaid, appointed the contents of the said note to be paid to the said plaintiff, and then and there *delivered* the said note, so indorsed, to the said plaintiff; of all which said premises the said Richard afterwards, to wit, on, &c. at, &c. had notice: and by reason of the premises, and by force of the *statute* in such case made and provided, he the said Richard became liable to pay to the said plaintiff the said sum of money mentioned in the said note, according to the tenor and effect of the said note, and of the said indorsement so made thereon as aforesaid; and being so liable, &c. undertook, &c. (Add the common money Counts; breach.)

monly

monly called a promissory note, his own proper hand being thereunto subscribed, and bearing date the same day and year aforesaid, and then and there delivered the said note to one A. B. and thereby promised to pay to the said A. B. by the name of, &c. or order, twenty pounds, four months after date, value received: and the said R. M. avers, that the said A. B. afterwards, and before the payment of the said sum of money, or of any part thereof, to wit, on, &c. at, &c. died intestate; and thereupon afterwards, to wit, on, &c. administration of all and singular the goods and chattels, rights and credits which were of the said A. B. at the time of his death, by Thomas by divine permission archbishop of Canterbury, primate of all England, and metropolitan, to one C. B. relict and widow of the said A. B. in due form of law was granted; and thereupon the said C. B. as administratrix in form aforesaid, afterwards, and before the payment of the said sum of money mentioned in the said note, or any part thereof, to wit, on, &c. at, &c. indorsed the said note, her own proper hand-writing being thereto subscribed; and by that indorsement she the said C. B. as administratrix as aforesaid, appointed the contents of the said note to be paid to the said plaintiff; whereof the said W. P. afterwards, to wit, on, &c. at, &c. had notice: by means of which said premises, and by force of the statute in such case made and provided, the said W. P. became liable to pay to the said plaintiff the said sum of money mentioned in the said note, according to the tenor and effect of the said note, and of the said indorsement so made thereon as aforesaid; and being so liable, &c. (Add the common Counts.)

SECOND INDORSEE.

THAT whereas, [&c. state the making and delivery of note by both defendants in the ordinary way, and then proceed as follows:] And the said A. (the payee and first indorser, to whom or to whose order the payment of the said sum of money in the said note specified was to be made, afterwards, and before the payment of the said sum of money in the said note specified, or of any part thereof, to wit, on the day and year aforesaid, at, &c. aforesaid, indorsed the said note, and by that indorsement appointed the said sum of money in the said note specified to be paid to one B. (the first indorsee and second indorser,) and then and there delivered the said note, so indorsed as aforesaid, to the said B. and the said B. to whom or to whose order the said sum of money in the said note specified was by virtue of the said indorsement so made thereon as aforesaid to be paid, afterwards, and before the payment of the said sum of money in the said note specified, or of any part thereof, to wit, on the day and year aforesaid, at, &c. aforesaid, indorsed, &c. and by that indorsement appointed, &c. to be paid to the said D. (the plaintiff and second indorsee,) and then and there delivered,

The Second (5) Indorsee against Makers (partners) on a note made by both. (5) Salk. 127. Ld. Raym. 444. 2. Barw. B.R. 82. Str. 442. 1st Indorsement.

2d Indorsement. Doug. 611. Burr. 1523, 458.

livered, &c. (as before); of which ~~said several~~ indorsements so made on the said note as aforesaid, the said *E.* and *F.* (drawers and defendants,) afterwards, to wit, on the day and year aforesaid, at, &c. aforesaid, had notice: whereby, and by reason of which said several premises, and by force of the statute, &c. the said *E.* and *F.* (defendants and drawers) became liable to pay, &c. according to the tenor and effect of the said note, and of the said several (a) indorsements so thereon made as aforesaid; and being so liable, &c. undertook, &c. according to the tenor and effect of the said note and the said several indorsements, &c.

(a) This seems proper, as it is not only by reason of the note, but of the indorsement also, that defendant becomes liable to pay to the plaintiff: however, whenever the *indorsement be to pay at a different time than the note*, you should confine the obligation of payment to the *tenor of such indorsement*, and not of the note likewise; and indeed the indorse-

ment seems so much attended to, that it has been held sufficient even in ordinary cases, to state the obligation of payment, as well as promise, to be "according to the tenor of such indorsement," without mentioning the note, though it was objected the indorsement might be to pay at an earlier period than the note. *Stra.* 478.

Declaration on a promissory note, Second Indorsee v. Maker where part of the money had been paid to the first Indorsee.

JAMES HOLMAN, late of London, aforesaid, was attached &c. for that whereas the said James, on the, &c. at, &c. made his certain note in writing, commonly called a promissory note, subscribed with his own proper hand, and bearing date the same day and year aforesaid, and then and there *delivered* the said note to one Thomas Weir, and thereby promised to pay to the said Thomas, by the name of, &c. or order, the sum of seventy pounds sterling, on the, &c. next ensuing the date of the said note, for value received by the said James: and the said Thomas, to whom or to whose order the payment of the said sum of money contained in the said note was to be made, after the making of the said note, and before the payment of the said sum of money contained in the said note, *or any part thereof, and also before the time appointed by the said note for the payment thereof*, to wit, on, &c. at, &c. aforesaid, *indorsed* the said note, his own proper hand being thereto subscribed, and by that indorsement appointed the contents of the said note to be paid to one George Spencer, and then and there *delivered* the said note to the said George Spencer; whereof the said James afterwards, to wit, on, &c. at, &c. had notice; and thereupon the said James afterwards, to wit, on, &c. at, &c. paid to the said George ten pounds, *part payment of the said seventy pounds* in the said note contained: and the said George afterwards, and before the payment of the said sixty pounds, *residue* of the said seventy pounds in the said note contained, or of any part thereof, to the said George, to wit, on, &c. at, &c. *indorsed* the said note, his own proper hand being thereto subscribed; and by that said last mentioned indorsement the said George appointed the said sixty pounds, the said residue of the said sum of money in the said note contained, to be paid to the said William, and then and there *delivered* the said note to the said William; whereof the said James afterwards, to wit,

Indorsement.

2d Indorsement after part paid, and before payment of the residue.

wit, on, &c. at, &c. had notice : and by reason of the premises, and by force of the statute in such case made and provided, the said James, became liable to pay the said sixty pounds, the residue of the said sum of money in the said note contained, to the said William, according to the tenor and effect of the said note, and the said several indorsements so made thereon as aforesaid ; and being so liable, he the said James, in consideration thereof, afterwards, to wit, on, &c. at, &c. undertook, and then and there faithfully promised the said William to pay him the said sixty pounds, residue of the said sum of money in the said note contained, according to the tenor and effect of the said note, and of the said several indorsements so made thereon as aforesaid. (Add the common money Counts and conclusion.)

LONDON, to wit. J. S. E. S. J. T. V. P. S. E. C. and P. M. assignees of the goods, debts, and effects which were of T. C. and J. H. late surviving copartners in trade together, having survived one J. B. deceased, who in his lifetime, together with the said T. C. and J. H. were partners and joint dealers in trade, and which said T. C. and J. H. surviving partners as aforesaid, since the decease of the said J. B. deceased as aforesaid, are bankrupts, within the true intent and meaning of the several statutes made and now in force concerning bankrupts, complain against R. C. J. D. and W. M. assignees of the goods, debts, and effects which were of F. S. and W. H. late copartners in trade together, bankrupts, within the intent and meaning of the several statutes made and now in force concerning bankrupts, being in the custody of, &c. for that whereas the said F. S. and W. H. after the first day of May which was in the year of Our Lord —, and before they became bankrupts, to wit, on, &c. A. D. 1780, at, &c. in, &c. made their certain note in writing, commonly called a promissory note, with the proper hand-writing of one of them the said F. S. and W. H. by and in their partnership name, firm, and style of F. S. and Co. being thereunto subscribed, bearing date the same day and year last aforesaid. and then and there delivered the said note to one J. F. ; by which said note the said F. S. and W. H. before they became bankrupts, five months after the date thereof, promised to pay to the said J. F. by the name and description of, &c. or order, the sum of five hundred pounds value received by the said F. S. and W. H. before they became bankrupts : and the said J. F. to whom or to whose order the payment of the said sum of money in the said note was thereby appointed to be made, afterwards, and before the payment of the said sum of money therein mentioned, or any part thereof, and also before the time appointed by the said note for the payment thereof, to wit, on, &c. at, &c. indorsed the said note, with his own proper hand-writing thereto subscribed ; and by that indorsement appointed the contents of the said note to be paid to one T. H. ; and the said T. H. to whom or to whose order the

Declaration by the Assignees of the surviving partners, who were Second Indorsees of a promissory note, against Assignees of Makers.

VOL. I. C c pay-

payment of the said sum of money in the said note mentioned was by the said indorsement appointed to be made, afterwards, and before the payment of the said sum of money therein mentioned, or any part thereof, and also before the time appointed by the said note for the payment thereof, to wit, on, &c. at, &c. in, &c. indorsed the said note, with his own proper hand-writing thereto subscribed, and by the said last mentioned indorsement appointed the contents of the said note to be paid to the said J. B. T. C. and J. H. in the lifetime of the said J. B. and before the said T. C. and J. H. became bankrupts, and then and there delivered the said note, so indorsed, to the said J. B. T. C. and J. H. in the lifetime of the said J. B. and before the said T. C. and J. H. became bankrupts: and the said plaintiffs, as assignees as aforesaid, further say, that afterwards, and before the time appointed by the said note for the payment of the said sum of money therein contained, to wit, on, &c. at, &c. the said J. B. died, and the said T. C. and J. H. before they became bankrupts, survived the said J. B. there and thereupon became possessed of the said note, so indorsed as aforesaid, as surviving partners, having survived the said J. B. deceased as aforesaid; of all which said premises they the said F. S. and W. H. afterwards, and before they became bankrupts, to wit, on, &c. at, &c. in, &c. had notice: and by reason of the said premises, and also by force of the statute in such case made and provided, they the said F. S. and W. H. before they became bankrupts, became and were liable to pay the said T. C. and J. H. as such surviving partners, before they the said T. C. and J. H. became bankrupts, the said sum of money contained in the said note, according to the tenor and effect thereof, and of the said indorsements so made thereon as aforesaid; and being so liable, they the said F. S. and W. H. before they became bankrupts, in consideration thereof, afterwards, to wit, on, &c. at, &c. undertook, and to the said T. C. and J. H. as such surviving partners as aforesaid, before they the said T. C. and J. H. became bankrupts, then and there faithfully promised to pay to them the said sum of money contained in the said note, whenever they the said F. S. and W. H. should be thereto afterwards requested. And whereas also the said F. S. and W. H. before they became bankrupts, afterwards, to wit, on, &c. at, &c. in, &c. were indebted to the said T. C. and J. H. as such surviving partners as aforesaid, and before they the said T. C. and J. H. became bankrupts, in the sum of other five hundred pounds of lawful money of Great Britain, for so much money by the said T. C. and J. H. as such surviving partners as aforesaid, and before the said T. C. and J. H. became bankrupts, before that time lent and advanced to and for the use of the said F. S. and W. H. before they became bankrupts, at their special instance and request; and being so indebted as last aforesaid, they the said F. S. and W. H. before they became bankrupts, in consideration, &c. (as before.) And whereas, &c. &c. (an account stated.) Yet the said F. S. and W. H. before they became bankrupts, and the said defendants as assignees as aforesaid, since the said F. S. and W. H.

2d Count.

3d Count.
Breach.

W. H. became bankrupts, not regarding the said several promises and undertakings by them the said F. S. and W. H. before they became bankrupts so made as aforesaid, but contriving, &c. the said T. C. and J. H. as such surviving partners as aforesaid, and before they the said T. C. and J. H. became bankrupts, and the said plaintiffs, as assignees as aforesaid, since the said T. C. and J. H. as surviving partners as aforesaid, became bankrupts, in this behalf have not, nor have either or any of them, yet paid the said several sums of money, or any part thereof, either to the said T. C. or J. H. as such surviving partners, and before they the said T. C. and J. H. became bankrupts, or to the said plaintiffs, assignees as aforesaid, or to either or any of them, since the said T. C. and J. H. surviving partners as aforesaid, became bankrupts, (although often requested so to do,) but to pay the same, or any part thereof, either to the said T. C. and J. H. surviving partners as aforesaid, before they the said T. C. and J. H. became bankrupts, or to the said plaintiffs, assignees as aforesaid, after the said T. C. and J. H. as surviving partners as aforesaid, became bankrupts, or to either or any of them, they the said F. S. and W. H. before they became bankrupts, and the said defendants, assignees as aforesaid, since they became bankrupts, have, and each of them hath, hitherto wholly refused; and to pay the same, or any part thereof, to the said plaintiffs, as assignees as aforesaid, or to either or any of them, they the said defendants, as assignees as aforesaid of the said F. S. and W. H. still do, and each of them still doth, refuse, to the damage of the said plaintiffs, as assignees as aforesaid, of one thousand pounds; and therefore, &c.

WESTMORELAND, to wit. T. G. complains against J. W. being, &c. for that whereas one W. J. on, &c. at, &c. made his certain note in writing, commonly called a promissory note, with his own proper hand being thereunto subscribed, bearing date the same day and year last aforesaid, and then and there delivered the said note to one J. S. by which said note the said W. J. promised, &c. (as in the note,) for value received by the said W. J.; and the said J. S. to whom or to whose order the payment of the said sum of money contained in the said note was to be made, afterwards, and before the payment of the said sum of money contained in the said note, or any part thereof, and also before the time appointed by the said note for the payment thereof, to wit, on, &c. at, &c. *indorsed* the said note, his own proper hand being thereunto subscribed, and by that indorsement the said J. S. appointed the contents of the said note to be paid to one T. S. or order, and then and there delivered the said note so indorsed to the said T. S.; and the said T. S. to whom or to whose order the payment of the said sum of money in the said note mentioned was by the said indorsement to be made, afterwards, &c. (as above,) and by the said last-mentioned indorsement, appointed the contents of the said note to be paid to one W. W. in his lifetime, or order.

3d Indorsement
by *Executrix* of
W. W. the second
Indorsee, to one
J. W. since de-
ceased.

4th Indorsement
by Administra-
trix of J. W.

5th Indorse-
ment.

Breach.

time, but now deceased, or to his order, and then and there delivered the said note so indorsed to the said W. W. in his lifetime, but now deceased; and the said W. W. afterwards, to wit, on, &c. at, &c. duly made his last will and testament in writing, and thereby then and there made and appointed M. W. *executrix* thereof, and afterwards, to wit, on, &c. at, &c. died (the said sum of money being wholly unpaid to him); and the said M. W. afterwards, to wit, on, &c. duly proved the said last will and testament, and took upon her the burthen of the execution thereof: and the said M. W. so being *executrix* of the said will, she the said M. W. afterwards, to wit, on, &c. (as before,) and by the said last-mentioned indorsement the said M. W. appointed the contents of the said note to be paid to one J. W. in his lifetime, now also deceased, or to his order, and then and there delivered the said note so indorsed to the said J. W. in his lifetime; and the said J. W. afterwards, to wit, on, &c. died intestate (the said sum of money being wholly unpaid to him in his lifetime): and afterwards, to wit, on, &c. at, &c. administration of all and singular the goods and chattels, rights and credits, which were belonging to the said J. W. at the time of his death, who so died intestate, by Samuel by Divine Providence bishop of Chester, was lawfully committed to one M. J.; and the said M. J. so being *administratrix* as aforesaid, afterwards, &c. (as before,) and by the said last-mentioned indorsement the said M. J. appointed the contents of the said note to be paid to the said W. J.; and the said W. J. to whom or to whose order the payment of the said sum of money contained in the said note was by the said last-mentioned indorsement to be made, afterwards, on, &c. (as before,) and by the said last mentioned indorsement the said W. J. appointed the contents of the said note to be paid to the said T. G. and then and there *delivered* the said note so indorsed to the said T. G.; of all which said several indorsements the said W. J. afterwards, to wit, on, &c. then and there had notice. *And the said T. G. avers*, that the said W. J. hath not paid, or caused to be paid, the said sum of money in the said note contained, or any part thereof to the said T. G. but the payment thereof to him hath hitherto wholly failed and neglected, neither have or hath the said J. S. T. S. M. W. M. J. or any of them, paid the same, or any part thereof, to the said T. G.: of all which premises the said W. J. afterwards, and *after the expiration of the said two months*, mentioned in the said note, and by the said note appointed for payment thereof, to wit, on, &c. at, &c. had notice: and by reason of the premises, and also by *force of the statute* in that case made and provided, he the said W. J. became, and was and is, liable to pay to the said T. G. the said sum of money contained in the said note; and the said W. J. being so liable, in consideration thereof, afterwards, to wit, on, &c. at, &c. undertook, and then and there faithfully promised the said T. G. to pay him the said sum of money contained in the said note when he the said W. J. should be thereto afterward requested. (Add the common Counts.)

ON POLICIES OF ASSURANCE.

ON SHIPS AND GOODS.

LONDON, to wit. James Baillie, Richard Crawshaw, William Clay, William Taylor, John Shoolbred, and John Barnes, who have survived Francis Henry Shepherd deceased, complain of William Cazalet, being in the custody of the marshal of the marshal-
 sea of our sovereign lord the now king, before the king himself; for that whereas the said James Baillie, Richard, William Clay, William Taylor, John Shoolbred, John Barnes, and Francis Henry, heretofore, in the lifetime of the said Francis Henry, to wit, on the twelfth day of February in the year of Our Lord 1787, to wit, at London, in the parish of St. Mary le Bow, in the ward of Cheap, according to the usage and custom of merchants, caused to be made a certain writing or policy of assurance, purporting thereby and containing therein, (amongst other things), that they the said James Baillie, Richard, William Clay, William Taylor, John Shoolbred, John Barnes, and Francis Henry, (by the description of the Trustees to the Estate of Mr. Miles Barber,) as well in their own name as for and in the name and names of all and every other person or persons to whom the same did, might, or should appertain in part or in all, did make assurance, and caused themselves, and them and every of them, to be insured, lost or not lost, at and from her arrival on the coast of Africa during her stay and trade, with liberty to exchange goods, slaves, and other African products, with any vessel or vessels whatever, and at and from thence to her port or ports of destination, sale, and final delivery in the British and French West Indies, and the continent of America, all or either, or Great Britain, upon any kind of goods and merchandizes, and also upon the body, tackle, apparel, ordnance, ammunition, artillery, boat, and other furniture of and in the good ship or vessel called the Eleanor, whereof was master, under God, for that then present voyage, Captain Crowdon, or whosoever else should go for master in the said ship, or by whatsoever other name or names the same ship or the master thereof was or should be named or called; beginning the adventure upon the said goods and merchandizes from the loading thereof aboard the said ship as aforesaid, upon the said ship, &c. and so should continue and endure during her abode there, upon the said ship, &c. and further, until the said ship, with all her ordnance, tackle, apparel, &c. and goods and merchandizes whatsoever, should be arrived at as aforesaid, upon the said ship, &c. until she had moored at anchor twenty-four hours in good safety, and upon the goods and merchandizes until the same should be there discharged and safely landed; and it should be law-

Declaration
 B.R. in assump-
 sit on a policy of
 assurance by the
 surviving trust-
 tees to the estate
 of one M. B. a
 merchant.

Policy

ASSUMPSIT GENERAL.—POLICIES OF ASSURANCE.

ful for the said ship, &c. in that voyage to proceed and sail to and touch and stay at any ports or places whatsoever and wheresoever, without being deemed a deviation, and without prejudice to that insurance; the said ship, &c. goods and merchandizes, &c. for so much as concerned the assureds, by agreement between the assureds and assurers in that policy, were and should be valued at : ship valued at two thousand pounds; slaves thirty pounds per head; camwood thirty pounds per ton; ~~ivory sixteen pounds per hundred weight; gold dust three pounds per ounce; gum copal five pounds per hundred weight; wax five pounds per hundred weight, warranted free from average occasioned by insurrection of slaves, under five per cent. and free from average, by trading in boats, under ten pounds per cent.~~ touching the adventures and perils which they the assurers were contented to bear, and did take upon them, in that voyage, they were of the seas, men of war, fire, enemies, pirates, rovers, thieves, jettisons, letters of mart and countermart, surprisals, takings at sea, arrests, restraints, and detainerments of all kings, princes, and people of what nation, condition, or quality soever, barratry of the master and mariners, and of all other perils, losses, and misfortunes that had or should come to the hurt, detriment, or damage of the said goods and merchandizes, and ship, &c. or any part thereof; and in case of any loss or misfortune, it should be lawful to the assureds, their factors, servants, and assigns, to sue, labour, and travel for, in and about the defence, safeguard, and recovery of the said goods and merchandizes, and ship, &c. or any part thereof, without prejudice to that insurance, to the charges whereof they the assurers would contribute each one according to the rate and quantity of his sum therein assured; and it was agreed by them the insurers, that that writing or policy of assurance should be of as much force and effect as the surest writing or policy of assurance theretofore made in Lombard-street, or in the Royal Exchange, or elsewhere, in London; and so they the assurers were contented, and did thereby promise and bind themselves, each one for his own part, their heirs, executors, and goods, to the assureds, their executors, administrators, and assigns, for the true performance of the premises, confessing themselves paid the consideration due unto them for that assurance by the assureds at and after the rate of four pounds per cent. to return one pound eight shillings and sixpence per cent. if she proceeded to England from the coast, and arrived; and by the said writing or policy of assurance, corn, fish, salt, fruit, flour, and seed, were warranted free from average, unless general, or the ship should be stranded; sugar, tobacco, hemp, flax, hides, and skins were warranted free from average, under five pounds per cent. and all other goods; also the ship and freight were warranted free of average under three pounds per cent. unless general, or the ship should be stranded; and the said insurance was, by the said writing or policy of assurance, declared to be on ship and goods, as by the said writing or policy of assurance more fully appears; of which said writing or policy of assurance the said

William

*in ships &
goods*

William Cazalet afterwards, to wit, on the said twelfth day of February in the year of Our Lord 1787, at London aforesaid, in the parish and ward aforesaid, had notice; and thereupon afterwards, and in the lifetime of the said Francis Henry, to wit, on the same day and year aforesaid, at London aforesaid, in the parish and ward aforesaid, in consideration that the said James Baillie, Richard, William Clay, William Taylor, John Shoolbred, John Barnes, and Francis Henry, at the special instance and request of the said William Cazalet, had then and there paid to the said William Cazalet the sum of sixteen pounds of lawful money of Great Britain, as a premium and reward for the insurance of four hundred pounds of and upon the said ship and goods in the said writing or policy of assurance mentioned, valued as aforesaid, and had then and there undertaken, and to the said William Cazalet faithfully promised, to perform and fulfil all things in the said writing or policy of assurance contained on the part and behalf of the assureds to be performed and fulfilled, he the said William Cazalet undertook, and to the said James Baillie, Richard, William Clay, William Taylor, John Shoolbred, John Barnes, and Francis Henry, then and there faithfully promised to become an assurer to the said James Baillie, Richard, William Clay, William Taylor, John Shoolbred, John Barnes, and Francis Henry, for the said sum of four hundred pounds of and upon the said ship and goods in the said writing or policy of assurance mentioned, valued as aforesaid, and to perform and fulfil all things in the said writing or policy of assurance contained, on his part and behalf as such assurer, as to the said sum of four hundred pounds to be performed and fulfilled; and the said William Cazalet then and there became an assurer to the said James Baillie, Richard, William Clay, William Taylor, John Shoolbred, John Barnes, and Francis Henry, of and upon the said ship and goods in the said writing or policy of assurance mentioned, valued as aforesaid accordingly, and then and there subscribed the said writing or policy of assurance, as such assurer, for the said sum of four hundred pounds; to wit, at London aforesaid, in the parish and ward aforesaid: and the said James Baillie, Richard, William Clay, William Taylor, John Shoolbred, and John Barnes, in fact say, that the said ship, in the said writing or policy of assurance mentioned, before the making of the said writing or policy of assurance, to wit, on the thirtieth day of June in the year of Our Lord 1785, arrived in good safety on the coast of Africa, in the said writing or policy of assurance mentioned, and did stay and trade there for a great length of time, to wit, from thence until the third day of July in the year of Our Lord 1787; and that the said ship, having taken in and loaded on board divers goods and merchandizes of great value, to wit, of the value of five hundred pounds of lawful money of Great Britain, did afterwards, to wit, on the same day and year last aforesaid, depart and set sail with the said goods and merchandize on board thereof, from the said coast of Africa upon the voyage, in the said writing or policy of assurance mentioned, for and towards her port or ports of destination, sale, and final delivery

consideration
from

undertaken
by 2/12.

who subscribed
at the policy

arrived in
safety on the
coast of Africa

departed
thence with
goods, for
her port of
destination

very in the British and French West Indies and the continent of America: and the said James Baillie, Richard, William Clay, William Taylor, John Shoolbred, and John Barnes further say, that the said insurance, so made as aforesaid, was made to and for the use and on the account of, and in trust for, one James Crowdfon, and one William Hanson, one Edward Rogers, one George Pengree, and one Quintin Dick, according to their several and respective interests therein; and that before and until, and at the time of the loss herein after next mentioned, the said James Crowdfon was interested in the said ship, and the said William Hanson, Edward Rogers, George Pengree, and Quintin Dick were interested in the said goods and merchandizes, so on board thereof as aforesaid, to a large amount, to wit, to the amount of all the money ever insured thereon, to wit, at London aforesaid, in the parish and ward aforesaid; and the said James Baillie, Richard, William Clay, William Taylor, John Shoolbred, and John Barnes further say, that the said ship, in the said writing or policy of assurance mentioned, with the said goods and merchandizes on board thereof as aforesaid, afterwards, and after her departure from the coast of Africa aforesaid, upon her said voyage, and whilst she was sailing and proceeding upon the high seas with the said goods and merchandizes on board thereof as aforesaid, and before her arrival at any of her port or ports of destination, sale, or final delivery in the said writing or policy of assurance mentioned, to wit, on the twenty-sixth day of July in the year of Our Lord 1787, was, by the mere perils and dangers of the seas, and by stormy and tempestuous weather, and the violence of the winds and waves, bulged, broken, damaged, spoiled, and destroyed, and the said ship, together with the said goods and merchandizes so on board thereof as aforesaid, thereby became and were rendered of no use or value, and were wholly lost to the respective proprietors thereof, to wit, at London aforesaid, in the parish and ward aforesaid; of all which premises the said William Cazalet afterwards, and in the lifetime of the said Francis Henry, to wit, on the first day of January in the year of Our Lord 1788, there had notice: and by reason thereof he the said William Cazalet then and there became and was liable to pay, and was then and there requested by the said James Baillie, Richard, William Clay, William Taylor, John Shoolbred, John Barnes, and Francis Henry, to pay them the said sum of four hundred pounds so by him assured as aforesaid, and which said sum of money he the said William Cazalet then and there ought to have paid, according to the meaning and effect of the said writing or policy of assurance, and of his said promise and undertaking so by him made in that behalf as aforesaid, to wit, at London aforesaid, in the parish and ward aforesaid. (Counts for money laid out and expended, had and received.) Yet the said William Cazalet, not regarding his said several promises and undertakings so by him made as aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said James Baillie, Richard, William Clay, William

say the sa
insurance was
made in
trust for the
according to
his intere
as to respec
tively.

ship destroyed
by perils
of the seas
goods wholly
lost

counts for
money laid
out & expen
ded had &
received

William Taylor, John Shoolbred, John Barnes, and Francis Henry, in the lifetime of the said Francis Henry, and the said James Baillie, Richard, William Clay, William Taylor, John Shoolbred, and John Barnes, since the death of the said Francis Henry, in this behalf did not, in the lifetime of the said Francis Henry, pay to the said James Baillie, Richard, William Clay, William Taylor, John Shoolbred, John Barnes, and Francis Henry, or to any or either of them, nor hath he, since the death of the said Francis Henry, paid to the said James Baillie, Richard, William Clay, William Taylor, John Shoolbred, and John Barnes, or to any or either of them, the said several sums of money, or any or either of them, or any part of them, (although often requested so to do,) but to pay the said several sums of money, or any or either of them, or any part of them, to the said James Baillie, Richard, William Clay, William Taylor, John Shoolbred, John Barnes, and Francis Henry, or to any or either of them in the lifetime of the said Francis Henry, he the said William Cazalet did wholly refuse to pay the said several sums of money, or any or either of them, or any part of them, to the said James Baillie, Richard, William Clay, William Taylor, John Shoolbred, and John Barnes, or to any or either of them, since the death of the said Francis Henry, hath hitherto wholly refused, and still doth refuse, to the damage of the said James Baillie, Richard, William Clay, William Taylor, John Shoolbred, and John Barnes, of five hundred pounds; and therefore they bring suit, &c.

EDWARD LAW.

See post. for the remaining Counts in this declaration, with Mr. Law's and Mr. Erskine's Opinions.

LONDON, to wit, Henry Cruger, esquire, complains of William Fowler, being in the custody of the marshal of the marshalsea of our sovereign lord the now king, before the king himself, of a plea, &c. for that whereas the said Henry heretofore, to wit, on the fifth day of January in the year of Our Lord 1788, at London, to wit, in the parish of St. Mary le Bow, in the ward of Cheap, according to the usage and custom of merchants, caused and procured to be made a certain writing or policy of assurance, purporting thereby, and containing therein, that the said Henry, (by the name and description of Henry Cruger of the city of Bristol,) merchant, or who else might or should be concerned, did make assurance, and caused themselves to be assured (lost or not lost) at and from Boston to Bristol quay, upon the body, tackle, apparel, and all other the furniture of, in, and in and upon the good ship called the Enterprize, of the burden of tons, or thereabouts, whereof was master, under God, for that voyage, Joseph Deane, or whosoever else should go for master in the said ship, or by whatsoever other name or names the same ship, or the master thereof, was or should be named or called; beginning the

Declaration in B. R. in assumpsit on a policy of assurance for freight from Boston to Bristol, where the ship was consumed by fire.

adventure

very in the British and French West Indies and the continent of America: and the said James Baillie, Richard, William Clay, William Taylor, John Shoolbred, and John Barnes further say, that the said insurance, so made as aforesaid, was made to and for the use and on the account of, and in trust for, one James Crowdfon, and one William Hanson, one Edward Rogers, one George Pengree, and one Quintin Dick, according to their several and respective interests therein; and that before and until, and at the time of the loss herein after next mentioned, the said James Crowdfon was interested in the said ship, and the said William Hanson, Edward Rogers, George Pengree, and Quintin Dick were interested in the said goods and merchandizes, so on board thereof as aforesaid, to a large amount, to wit, to the amount of all the money ever insured thereon, to wit, at London aforesaid, in the parish and ward aforesaid; and the said James Baillie, Richard, William Clay, William Taylor, John Shoolbred, and John Barnes further say, that the said ship, in the said writing or policy of assurance mentioned, with the said goods and merchandizes on board thereof as aforesaid, afterwards, and after her departure from the coast of Africa aforesaid, upon her said voyage, and whilst she was sailing and proceeding upon the high seas with the said goods and merchandizes on board thereof as aforesaid, and before her arrival at any of her port or ports of destination, sale, or final delivery in the said writing or policy of assurance mentioned, to wit, on the twenty-sixth day of July in the year of Our Lord 1787, was, by the mere perils and dangers of the seas, and by stormy and tempestuous weather, and the violence of the winds and waves, bulged, broken, damaged, spoiled, and destroyed, and the said ship, together with the said goods and merchandizes so on board thereof as aforesaid, thereby became and were rendered of no use or value, and were wholly lost to the respective proprietors thereof, to wit, at London aforesaid, in the parish and ward aforesaid; of all which premises the said William Cazalet afterwards, and in the lifetime of the said Francis Henry, to wit, on the first day of January in the year of Our Lord 1788, there had notice: and by reason thereof he the said William Cazalet then and there became and was liable to pay, and was then and there requested by the said James Baillie, Richard, William Clay, William Taylor, John Shoolbred, John Barnes, and Francis Henry, to pay them the said sum of four hundred pounds so by him assured as aforesaid, and which said sum of money he the said William Cazalet then and there ought to have paid, according to the meaning and effect of the said writing or policy of assurance, and of his said promise and undertaking so by him made in that behalf as aforesaid, to wit, at London aforesaid, in the parish and ward aforesaid. (Counts for money laid out and expended, had and received.) Yet the said William Cazalet, not regarding his said several promises and undertakings so by him made as aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said James Baillie, Richard, William Clay,

William

by the said
James was
made in
trust for
according to
his inter-
ests respec-
tively.

ship destroyed
by perils
of the seas
and wholly
lost

counts for
money laid
out & expen-
ded had &
received

William Taylor, John Shoolbred, John Barnes, and Francis Henry, in the lifetime of the said Francis Henry, and the said James Baillie, Richard, William Clay, William Taylor, John Shoolbred, and John Barnes, since the death of the said Francis Henry, in this behalf did not, in the lifetime of the said Francis Henry, pay to the said James Baillie, Richard, William Clay, William Taylor, John Shoolbred, John Barnes, and Francis Henry, or to any or either of them, nor hath he, since the death of the said Francis Henry, paid to the said James Baillie, Richard, William Clay, William Taylor, John Shoolbred, and John Barnes, or to any or either of them, the said several sums of money, or any or either of them, or any part of them, (although often requested so to do,) but to pay the said several sums of money, or any or either of them, or any part of them, to the said James Baillie, Richard, William Clay, William Taylor, John Shoolbred, John Barnes, and Francis Henry, or to any or either of them in the lifetime of the said Francis Henry, he the said William Cazalet did wholly refuse to pay the said several sums of money, or any or either of them, or any part of them, to the said James Baillie, Richard, William Clay, William Taylor, John Shoolbred, and John Barnes, or to any or either of them, since the death of the said Francis Henry, hath hitherto wholly refused, and still doth refuse, to the damage of the said James Baillie, Richard, William Clay, William Taylor, John Shoolbred, and John Barnes, of five hundred pounds; and therefore they bring
EDWARD LAW.

See post. for the remaining Counts in this declaration, with Mr. Law's and Mr. Erskine's Opinions.

LONDON, to wit. Henry Cruger, esquire, complains of William Fowler, being in the custody of the marshal of the marshalsea of our sovereign lord the now king, before the king himself, of a plea, &c. for that whereas the said Henry heretofore, to wit, on the fifth day of January in the year of Our Lord 1788, at London, to wit, in the parish of St. Mary le Bow, in the ward of Cheap, according to the usage and custom of merchants, caused and procured to be made a certain writing or policy of assurance, purporting thereby, and containing therein, that the said Henry, (by the name and description of Henry Cruger of the city of Bristol,) merchant, or who else might or should be concerned, did make assurance, and caused themselves to be assured (lost or not lost) at and from Boston to Bristol quay, upon the body, tackle, apparel, and all other the furniture of, in, and in and upon the good ship called the Enterprize, of the burden of tons, or thereabouts, whereof was master, under God, for that voyage, Joseph Deane, or whosoever else should go for master in the said ship, or by whatsoever other name or names the same ship, or the master thereof, was or should be named or called; beginning the
Declaration in B. R. in assumpsit on a policy of assurance for freight from Boston to Bristol, where the ship was consumed by fire.
adventure

adventure upon the said ship, tackle, apparel, &c. at and from Boston as aforesaid, and so should continue and endure until the said ship should be safely arrived at aforesaid, and until she should be moored twenty and four hours in good safety at Bristol quay, and it should be lawful for the said ship, &c. in her voyage to proceed and sail to, touch and stay at, any ports or places, without prejudice to that insurance; the said ship, tackle, &c. for so much as it concerned the assured by agreement made between the assured and assurers in that policy, were and should be valued at seven hundred and fifty pounds sterling, without any further account to be given by the assured to the assurers, or any of them for the same, touching the adventures and perils which they the assurers were contented to bear and take upon themselves in that voyage, they were of the seas, men of war, fires, enemies, pirates, rovers, thieves, jettizons, letters of mart and countermart, surprisal, takings at sea, arrests, restraints, and detainments, of all kings, princes, or people, of what nation, condition, or quality soever, barratry of the master and mariners, and all other perils, losses, and misfortunes that had or should come to the hurt, detriment, or damage of the said ship, tackle, &c. or to any part thereof; and in case of any losses or misfortunes, it should be lawful to and for the assured, their factors, servants, and assignees, to sue, labour, and travel for, in and about the defence, safeguard, and recovery of the said ship, tackle, &c. or any part thereof, without prejudice to that insurance; to the charges whereof they the assurers would contribute each one according to the rate and quantity of his sum therein assured. And it was agreed by them the assurers that that writing or policy of assurance should be of as much force and effect as the surest writing or policy of assurance theretofore made in Lombard-street, or elsewhere in London; and so they the assurers were contented, and did thereby promise and bind themselves, each one for his own part, their heirs, executors, and goods, to the assured, their executors, administrators, and assigns, for the true performance of the premises, confessing themselves paid the consideration due unto them for that assurance by the said assured, or their assigns, at three guineas per cent.; in witness whereof, they the assurers had subscribed their names and sums assured, in Bristol, the fifth day of January 1788 aforesaid, as by the said writing or policy of assurance more fully appears: and by the said writing or policy of assurance it was further agreed by and between the assured and assurers, that in case of any average loss, not exceeding five pounds per cent. the assurers, by agreement, were not to pay or allow any thing towards such loss; and, by the said writing or policy of assurance, corn, fish, salt, fruit, flour, and seed were warranted free from average, unless general, or the vessel should be stranded; and that the freight of the said ship in the said voyage in the said writing or policy of assurance mentioned, valued at two hundred pounds sterling, should be insured by the said writing or policy of assurance, on the terms and conditions therein contained respecting the said ship,

as by the said writing or policy of assurance, reference being thereunto had, may more fully appear; of which said writing or policy of assurance the said William afterwards, to wit, on the same day and year afore said, at London afore said, in the parish and ward afore said, had notice; and thereupon afterwards, to wit, on the same day and year afore said, at London afore said, in the parish and ward afore said, in consideration that the said Henry, at the special instance and request of the said William, had then and there paid to the said William the sum of three guineas of lawful money of Great Britain, as a premium and reward for the assurance of one hundred pounds, upon the freight of the said ship in the said voyage in the said writing or policy of assurance mentioned, and had then and there undertaken, and to the said William then and there faithfully promised, to perform and fulfil every thing in the said writing or policy of assurance contained on the part and behalf of the assured to be done, performed, and fulfilled, he the said William undertook, and to the said Henry then and there faithfully promised, that he the said William would become an assurer to the said Henry for the sum of one hundred pounds, in and upon the freight of the said ship in the said voyage in the said *writing or policy of assurance* mentioned, and would do, perform, and fulfil all things in the said writing or policy of assurance contained on his part and behalf as such assurer as afore said as to the said one hundred pounds, to be done, performed, and fulfilled; and the said William then and there became an assurer to the said Henry, and subscribed the said writing or policy of assurance, as such assurer, for the said sum of one hundred pounds, and the said Henry in fact saith, that the said ship, at and after the time of the making of the said writing or policy of assurance, to wit, on the same day and year afore said, was in good safety, to wit, at Boston afore said, in the said writing or policy of assurance mentioned; and that afterwards, to wit, on the same day and year afore said, the said ship, with divers goods and merchandizes on board of great value, to wit, of the value of one thousand pounds, departed and sailed from Boston as afore said on her said intended voyage, and that one Isaiah Doane then, and from thence until and at the time of the loss herein after mentioned, was interested in the freight of the said ship in the said voyage to a large amount, to wit, to the amount of all the monies by him ever insured or caused to be insured thereon, and that the said insurance, so made as afore said in the name of the said Henry, was made for and on the account of the said Isaiah Doane, and for his use and benefit, to wit, at London afore said, in the parish and ward afore said: and the said Henry further says, that the said ship, in the said writing or policy of assurance mentioned, with the said cargo on board her, afterwards, and after the making of the said writing or policy of assurance, to wit, on the same day and year afore said, departed and set sail from Boston afore said, in the said writing or policy of assurance mentioned, upon her said intended voyage, towards Bristol afore said, in the said writing or policy of insurance mentioned; and the said Henry further says, that the said ship, with
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burnt by fire

the said goods and merchandize on board of her, afterwards, and after her departure from Boston aforesaid, upon her said intended voyage, in the said writing or policy of assurance mentioned, and whilst she was sailing and proceeding upon the high seas, and in her said voyage, and before she arrived at Bristol, in the said writing or policy of assurance mentioned, to wit, on the fourteenth day of March in the year of Our Lord 1788 aforesaid, on the high seas, was wholly consumed, destroyed, and burnt by fire and the said ship, and the goods and merchandizes so being on board the said ship, were wholly destroyed and lost, and the freight of the said ship in the said voyage thereby wholly lost to the said Isaiah Doane, that is to say, at London aforesaid, in the parish and ward aforesaid; of all which premises the said William afterwards, to wit, on the same day and year last aforesaid, at London aforesaid, in the parish and ward aforesaid, had notice, and was then and there requested by the said Henry to pay him the said sum of one hundred pounds, so by the said William insured as aforesaid; and which said last mentioned sum of one hundred pounds the said William then and there ought to have paid to the said Henry, according to the form and effect of the said writing or policy of assurance, and the said promise and undertaking so made by the said William in that behalf as aforesaid, to wit, at London aforesaid, in the parish and ward aforesaid. (Counts for money had and received.) Nevertheless the said William, not regarding his said several promises and undertakings in form aforesaid made, but contriving and fraudulently intending, craftily and subtilly to deceive and defraud the said Henry in this behalf, hath not paid to the said Henry the said several sums of money, or any of them, or any part thereof, (although so to do he the said William afterwards, to wit, on the same day and year last aforesaid, at London aforesaid, in the parish and ward aforesaid, was by the said Henry requested,) but to pay the same to the said Henry he the said William hath hitherto wholly refused, and still doth refuse: whereupon he the said Henry saith he is injured and hath sustained damage to the value of one hundred pounds; and therefore he brings his suit, &c.

SAM. HEYWOOD.

Record of an issue in assumpsit on a policy of insurance on goods, &c. ship warranted to sail with convoy from Grenada to Liverpool; ship foundered in her voyage home.

LONDON, to wit. Be it remembered, that on Thursday next after eight days of St. Hilary in this same Term, before our lord the king at Westminster, come Walter Stott and John Tate, by Richard Shawe their attorney, and bring into the court of our said lord the king, before the king himself now here, their certain bill against John Taylor Vaughan, being in the custody of the marshal of the marshalsea of our lord the now king, before the king himself, of a plea of trespass on the case; and there are pledges for the prosecution, to wit, Peter Doe and Abel Roe; which said bill follows in these words, to wit: London, to wit, Walter Scott and John Tate complain of John Taylor Vaughan, being in the custody of the marshal of the marshalsea of our lord the now king, before the king himself, of a plea; for that where-

as the said Walter and John Tate, heretofore, to wit, on the tenth day of September in the year of Our Lord 1793, at London, to wit, in the parish of St. Mary le Bow, in the ward of Cheap, according to the usage and custom of merchants, caused and procured to be made a certain writing or policy of assurance, purporting thereby, and containing therein, (amongst other things) that the said Walter and John Tate, by the name and description of "Walter Stott, esquire, and Co." as well in their own name, as for and in the name and names of all and every other person or persons to whom the same did, might, or should appertain in part or in all, did make assurance, and cause themselves and them, and every of them, to be insured, lost or not lost, at and from Grenada to Liverpool, warranted to sail on or before the first of August 1793, upon any kind of goods and merchandizes, and also upon the body, tackle, apparel, ordnance, munition, artillery, boat, and other furniture, of and in the good ship or vessel called the Anna Philippa and Heart of Oak, both or either, whereof was master, under God, for that then present voyage, A. B. or whosoever else should go for master in the said ship, or by whatsoever other name or names the said ship, or the master thereof, was or should be named or called; beginning the adventure upon the said goods and merchandizes from the loading thereof aboard the said ship, at Grenada, upon the said ship, &c. and so should continue and endure, during her abode there, upon the said ship, &c. and further, until the said ship, with all her ordnance, tackle, apparel, &c. and goods and merchandizes whatsoever, should be arrived at Liverpool; upon the said ship, &c. until she had moored at anchor twenty-four hours in good safety; and upon the goods and merchandizes, until the same should be there discharged and safely landed; and it should be lawful for the said ship, &c. in that voyage to proceed and sail to, and touch and stay, at any ports or places whatsoever, without prejudice to that insurance; the said ship, &c. goods and merchandizes, &c. for so much as concerned the assureds, by agreement between the assureds and assurers in that policy, were and should be valued at touching the adventures and perils which they the assurers were contented to bear, and did take upon themselves in that voyage, they were of the seas, men of war, fire, enemies, pirates, rovers, thieves, jettisons, letters of mart and countermart, surprisals, takings at sea, arrests, restraints, and detainments of all kings, princes, and people, of what nation, condition, or quality soever, barratry of the master and mariners, and of all other perils, losses and misfortunes, that ~~had or~~ should come to the hurt, detriment, or damage of the said goods and merchandizes, and ship, &c. or any part thereof; and in case of any loss or misfortune, it should be lawful to the assureds, their factors, servants, and assigns, to sue, labour and travel for, in and about the defence, safeguard, and recovery of the said goods and merchandizes, and ship, &c. or any part thereof, without prejudice to the insurance; to the charges whereof they the assurers would contribute each one according

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ASSUMPSIT GENERAL.—POLICIES or ASSURANCE.

ship as aforesaid, became and were wholly lost to the said Walter and John Tate, to wit, at London aforesaid, in the parish and ward aforesaid; of all which said premises the said John Taylor afterwards, to wit, on the first day of January in the year of Our Lord 1794, at London aforesaid, in the parish and ward aforesaid, had notice: and by reason thereof the said John Taylor then and there became liable to pay to the said Walter and John Tate a large sum of money, to wit, the sum of fifty pounds, in respect of the said sum of one hundred pounds, so by him insured as aforesaid, according to the meaning and effect of the said writing or policy of assurance, and of the said promise and undertaking so made by him the said John Taylor in that behalf as aforesaid, to wit, at London aforesaid, in the parish and ward aforesaid. (A Count for money had and received.) Nevertheless the said John Taylor, not regarding his said several promises and undertakings so by him made as aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said Walter and John Tate in this respect, hath not yet paid the said several sums of money, or any part thereof, to the said Walter and John Tate, or either of them, nor in any manner satisfied them for the same, (although often, to wit, on the same day and year last aforesaid, at London aforesaid, in the parish and ward aforesaid, by the said Walter and John Tate requested so to do,) but to pay the same to the said Walter and John Tate, or to either of them, or in any manner to satisfy them for the same, he the said John Taylor hath hitherto wholly refused, and doth still refuse, to the damage of the said Walter and John Tate of two hundred pounds; and therefore they bring their suit, &c.

I Have left unaltered the averment that the ship sailed with convoy from Grenada, for without it I think the declaration would be bad. If the ship sailed under convoy of a man of war appointed by the admiral to carry the merchantmen to the place of rendezvous, it will be a sailing with convoy within this poli-

cy, though such man of war did not afterwards accompany the fleet in the voyage. As far as I can gather of the facts, I think the clause giving liberty to touch, &c. relates only to touching at places in the voyage insured.

SAMUEL HEYWOOD.

Plac.

And the said John Taylor, by Francis Gregg the younger his attorney, comes and defends the wrong and injury, when, &c. and says, that he did not undertake and promise in manner and form as the said Walter and John have above thereof complained against him; and of this he puts himself upon the country, &c. and the said Walter and John do the like, &c.; therefore let a jury thereupon come before our lord the king at Westminster, on next after by whom, &c. and who neither, &c. to recognize, &c. because, as well, &c. the same is given to the parties aforesaid at the same place.

AND

AND the said H. further says, that afterwards, and before the arrival of the said last mentioned ship, with the said goods and merchandizes so loaden on board her as last aforesaid, at Rotterdam aforesaid, the master and mariners in and on board the said last mentioned ship, in a *barratrous* and fraudulent manner, without the knowledge and against the will of the said H. took and carried away the said last mentioned ship, with the said goods and merchandizes so on board her as aforesaid, to places unknown to the said H. and converted and disposed thereof to their own use; and the said H. lost and was thereby deprived of the said last mentioned ship, and the goods and merchandizes so on board her as aforesaid, and the profits thereof.

Different Counts in declarations in assumpsit on policies of insurance on ships and goods.

For barratry of the master and sailors.

AND that whilst the said last mentioned ship was sailing and proceeding on her said voyage, and before her arrival at Charles-town, in the said writing or policy of assurance mentioned, to wit, on the tenth of July in the year aforesaid, the said ship was, upon the high seas, with force and arms, and in an hostile manner, attacked, conquered, took, and carried away a prize by certain *enemies* of our lord the now king and his crown of Great Britain, to wit, by certain subjects of the French king, being then and still at enmity and open war with the said lord the king, and thereby the same ship, with all the tackle, apparel, boat, and other furniture thereof, became and was totally lost to the said plaintiff, to wit, at, &c.; of all which, &c.

Capture by (enemies) the French.

AND that afterwards, and during the said voyage, that is to say, on the twentieth of April in the year aforesaid, the said ship having the said goods and merchandizes on board, sailing and proceeding on her said voyage after her departure from St. Thomas Island, and before her arrival at H. aforesaid, in the high seas, was, by and through the mere *danger of the seas*, and the force and violence of the winds and waves, and by means of stormy tempestuous weather, greatly damaged and opened in the seams, and between the planks rendered leaky, and greatly filled with water, and the said goods and merchandizes thereby, then and there in the said voyage, were wetted, damaged, and wholly spoiled, and rendered of no use or value to the proprietors thereof; of all which, &c.

Goods damaged by a leak sprung in a storm.

AND the said plaintiffs further say, that the said ship, after the making of the said writing or policy of assurance, and within eighteen months after the day of her arrival in the said river Gambia, and during her stay and trade there, to wit, sixth of March 1756, was forced and cast upon a rock in the said river Gambia, and was then and there broke, shattered, and bulged, and the said goods and merchandizes, so loaden in and on board

The ship cast on a rock and the goods damaged, and afterwards the ship lost.

the said ship as aforesaid, were thereby then and there wetted, damaged, and wholly spoiled; and the said ship afterwards, and within the space of eighteen months from the day of her arrival in the said river Gambia, and during her stay and trade there, to wit, on the same day and year aforesaid, by force of the winds and tempests, was wholly lost there in the said river Gambia; of all which, &c.

The ship on her arrival seized by savages, and with the tackle, &c. broke in pieces and spoiled.

AND the said plaintiffs further say, that long after the expiration of twenty-four hours from the arrival of the said ship at Gambia aforesaid, and during her abode, that is to say, twentieth October 1756, *certain inhabitants of Africa*, to the said plaintiffs unknown, and without the default of the said plaintiffs, or any of them, by force and violence seized the said ship, and broke in pieces, shattered, and spoiled the said ship, and the tackle, apparel, and furniture thereof; of all which, &c.

The ship damaged on her voyage by unknown persons, and robbed.

AND the said plaintiffs further say, that after the departure of the said ship from Cork aforesaid, and before the said ship had finished the said intended voyage, to wit, twenty-seventh of January 1760, certain persons, to the said plaintiffs unknown, and without the default of the said plaintiffs, or either of them, broke, damaged, and spoiled the body of the said ship, and broke, spoiled, took, and *carried away* the tackle, apparel, ordnance, munition, artillery, boat, and furniture of the said ship in the said writing or policy of assurance mentioned, to the value of four hundred pounds, whereby the said last mentioned ship was disabled from performing her said voyage, and did not perform the same, but became of no use to the proprietors thereof; of all which, &c.

The ship and goods burnt at sea.

WAS on the high seas burnt and consumed with and by fire; and the said goods and merchandizes then being and remaining in and on board the said ship, was thereby then and there wholly burnt and consumed with and by fire, and wholly lost to the owners and proprietors thereof; of all which, &c.

Interest in a ship, namely, plaintiff two thirds, and other persons the remaining third.

AND the said plaintiff further saith, that the said P. H. one G. H. and one M. H. at the time of the making of the said writing or policy of assurance, and from thence continually until and at the time of the loss hereinafter mentioned, were interested in the said ship to a great value, that is to say, to the value of one thousand pounds, viz. at, &c. and that the said writing or policy of assurance was procured, and caused to be made as aforesaid, for the use and benefit of the said P. H. the said G. H. and the said M. H. that is to say, as to two-third parts of the value of the said last mentioned ship, for and on the behalf and for the sole use and benefit of the said plaintiff; and as to the remainder third part

part thereof, for and on the behalf and benefit of the said G. H. and M. H. to wit, at, &c.

AND that the said plaintiffs, at the time of the loading of the said goods and merchandizes on board the said ship as aforesaid, and from thence continually until the time of the misfortune hereinafter mentioned, were interested in the said goods and merchandizes so laden on board the said ship, to a great value, that is to say, to the value of one thousand pounds.

Plaintiffs interested in the cargo to a large amount.

AND the said plaintiffs further say, that at the time of the making of the said writing or policy of assurance, and from thenceforth until and at the time of the capture and loss of the said ship hereinafter mentioned, one W. B. S. B. and A. B. were interested in a moiety of the said ship to a large value, to wit, to the value of all the money ever insured for them thereupon, and that the said insurance so made as aforesaid, was made by the said plaintiffs in trust for, and for the use and benefit of the said W. B. &c. viz. at, &c.

Plaintiffs say that W. B. S. B. and A. B. were interested in a moiety of ship.

FOR the assurance of one hundred pounds, upon the *body*, *tackle*, apparel, ordnance, munition, artillery, boat, and other furniture, of and in the said ship, in the said writing or policy of assurance mentioned, and had, &c.

Declarations on insurances. 1st. Insurance of body, tackle, &c. of ship.

FOR the assurance of one hundred pounds, of and upon one half or *moiety* of the said ship, in the said writing or policy of assurance mentioned, and had, &c.

2d. 100l. on moiety of ship.

FOR the assurance of two hundred pounds, upon the premises mentioned in the said writing or policy of assurance, that is to say, one hundred pounds upon the *goods* and merchandizes in the said writing or policy of assurance mentioned, and one hundred pounds upon the *body*, tackle, apparel, ordnance, munition, artillery, boat, and other furniture of the said ship in the said writing or policy of assurance mentioned, and had, &c.

3d. 200l. on goods, 100l. on ship.

FOR the assurance of one hundred pounds upon the *goods and merchandizes* in the said writing or policy of assurance mentioned, and had, &c.

4th. 100l. on goods.

AND the said plaintiff further saith, that after the said capture of the said ship, and by reason and in consequence thereof, the said A. B. &c. for whose benefit the said assurance made, before the exhibiting of his bill, to wit, twentieth of November in the last year aforesaid, at, &c. did sue, endeavour, and labour to recover the

For a rateable part of expence in endeavouring to recover her according to terms of policy.

the aforesaid ship, and in so doing did necessarily expend a large sum of money, that is to say, six hundred pounds of lawful money of Great Britain; whereby the said defendant, according to the terms of the said policy of assurance, and of his promise and undertaking aforesaid, became liable to pay to, and ought to have paid to the said plaintiff, for the use of the said A. B. &c. the further sum of one hundred pounds, the said one hundred pounds being the *rateable part or proportion* of the expence aforesaid, which the said defendant ought to have paid and contributed in respect of the insurance aforesaid; whereof the said defendant afterwards, to wit, on the same day and year aforesaid, at, &c. had notice.

Declaration on a policy of insurance on goods on board a ship which was taken by the enemies,

LONDON, *ss.* Joachim Famin and Noel Famin complain of George Cawthorne, being in the custody, &c. for that whereas the said Joachim Famin and Noel Famin, on the thirtieth day of May A. D. 1780, at L. aforesaid, to wit, at the parish of St. Mary le Bow, in the ward of Cheap, according to the usage and custom of merchants from time immemorial there used and approved of, caused to be made a certain writing or policy of insurance, purporting thereby and containing therein, that as well in own name, as for and in the name and names of all and every other person or persons to whom the same might or did appertain in part or in all, did make assurance, and cause, and them and every of them, to be insured, lost or not lost, at and from Marseilles to Nantz, warranted to sail on or before the fifth of May 1780, upon any kind of goods and merchandizes whatsoever, loaden or to be loaden on board the good ship or vessel called the Concorde, Dutch vessel, whereof was master, under God, for that present voyage, Meynders Fredricks, *or whoever else should go for master in the said ship, or by whatsoever other name or names the said ship, or the master thereof, was or should be named or called*; beginning the adventure upon the said goods and merchandizes from and immediately following the loading thereof on board the said ship at Marseilles, and so should continue and endure until the said ship, with the said goods and merchandizes whatsoever, should be arrived at Nantz; and the same there safely landed, and it should be lawful for the said ship in that voyage to stop and stay at any ports or places whatsoever, without prejudice to that insurance; the said goods and merchandizes by agreement should be valued at l.: touching the adventures and perils which they the assurers were contented to bear, and did take upon them in that voyage, they were of the seas, men of war, fire, enemies, pirates, rovers, thieves, jettisons, letters of mart and countermart, surprisals, takings at sea, arrests, restraints, and detainerments of all kings, princes, and people of what nation, condition, or quality soever, barraty of the master and mariners, and of all other perils, losses, and misfortunes that had or should come to the hurt, detriment, or damage of the said goods or merchandizes, or any part thereof.

And

And in case of any loss or misfortune, it should be lawful for the assureds, their factors, servants, and assigns, to sue, labour, and travel for, in and about the defence, and safeguard, and recovery of the said goods and merchandizes, or any part thereof, without prejudice to that insurance, to the charges whereof they the assurers would contribute, each one according to the rate and quantity of his sum therein assured. And it was agreed by them the insurers, that that writing or policy of assurance should be of as much force and effect as the surest writing or policy of assurance theretofore made in Lombard-street, or in the Royal Exchange, or elsewhere in London; and so they the assurers were contented, and did thereby promise and bind themselves, each one for his own part, their heirs, executors, and goods, to the assureds, their heirs, executors, administrators, and assigns, for the true performance of the premises; confessing themselves paid for the consideration due unto them for that assurance by the assured, at and after the rate of twenty-five guineas per cent. In witness whereof they the assurers had subscribed their names and

assured in London. And, by the said writing or policy of assurance, corn, fish, salt, fruit, flour, and seed were warranted free from average, unless general, or the ship should be stranded; sugar, tobacco, hemp, flax, hides, and skins were warranted free from average under five pounds per cent. and all other goods all from average under three pounds per cent. unless general, or the ship should be stranded, as by the said writing or policy of assurance, reference being thereunto had, more fully appears; of which said writing or policy of assurance he the said George afterwards, to wit, on the said thirtieth day of May in the said A. D. 1780, at L. aforesaid, in the parish, &c. aforesaid, had notice. And thereupon afterwards, to wit, on the same day and year last aforesaid, at, &c. aforesaid, in consideration that the said Joachim and Noel, at the special instance and request of the said George, had then and there paid the said George a large sum of money, to wit, the sum of twenty-nine pounds eight shillings, of lawful money of Great Britain, as a premium or reward for the assurance of a large sum of money, to wit, the sum of one hundred and twelve pounds, of like lawful money, of and upon the premises in the said writing or policy of assurance contained, and had undertaken and then and there faithfully promised the said George to perform and fulfil all things in the said writing or policy of assurance contained on the part and behalf of the said assured to be done and performed, he the said George undertook, and then and there faithfully promised the said Joachim and Noel, that he the said George would become an assurer to the said Joachim and Noel, to wit, for the said sum of one hundred and twelve pounds, of and upon the said premises mentioned in the said writing or policy of assurance, and that he would perform and fulfil all things in the said writing or policy of assurance contained on his part and behalf as such assurer, as to the said one hundred and twelve pounds to be performed and fulfilled,

according to the form and effect of the said ~~writing or policy of~~ assurance; and the said George then and there subscribed the said writing or policy of assurance as such assurer, to wit, for the said sum of one hundred and twelve pounds accordingly, that is to say, at London aforesaid, at the parish and ward aforesaid. And the said Joachim and Noel do aver, that the said ship or vessel, in the said writing or policy of assurance mentioned, at the time of the sailing thereof herein after mentioned, and from thence until and at the time of the loss thereof, herein also after mentioned, was a Dutch vessel, that is to say, at L. aforesaid, at the parish, &c. aforesaid x. And the said Joachim and Noel do aver, that the said writing or policy of assurance so by them the said Joachim and Noel made as aforesaid, was by them so made *in trust for, and for the use, risk, benefit, behalf, and account of Mr. Bilmain, and of certain other persons who carried on trade and commerce in co-partnership in foreign parts, under the style and firm of Gaudin, Enissard, and of certain other persons carrying on trade and commerce in foreign parts under the style and firm of Seurat and Louvel respectively, according to their respective proportions as herein after next mentioned.* And the said Joachim and Noel further say, that afterwards, to wit, on the thirtieth day of April in the said A. D. 1780, divers goods and merchandizes of the said Mr. Bilmain, of great value, to wit, of the value of two hundred and twenty pounds, of like lawful money, and divers other goods of the said Gaudin and Enissard, of great value, to wit, of the value of one hundred and fifty pounds, of like lawful money, and divers other goods of the said Seurat and Louvel, of great value, to wit, of the value of other one hundred and fifty pounds, of like lawful money, were put on board the said ship or vessel, being a Dutch vessel as aforesaid, to be carried therein upon the voyage, in the said writing or policy of assurance mentioned, to wit, at London aforesaid, in the parish, &c. aforesaid +. And the said Joachim and Noel further say, that the said ship, in the said writing or policy of assurance mentioned, to wit, at L. aforesaid, in the parish, &c. aforesaid, afterwards, and before the fifth of May in said A. D. 1780, that is to say, on said thirtieth of April in said A. D. 1780, departed and set sail from Marseilles aforesaid for and towards Nantz, in the said policy of assurance mentioned, with the said goods and merchandizes on board thereof; but that the said ship did never arrive at Nantz aforesaid in that voyage, but, on the contrary thereof, the said ship, sailing and proceeding on her said voyage, with the said goods and merchandizes on board thereof as aforesaid, after her departure from Marseilles aforesaid, and before her arrival at Nantz aforesaid, viz. on the thirtieth day of May in the year of Our Lord 1780, was, in and upon the high seas, with force and arms, and in an *hostile* manner, attacked, conquered, taken, and carried away by certain persons to the said Joachim and Noel unknown; and the said ship, and goods and merchandizes on board thereof as aforesaid, were thereby wholly lost to the

Taken by ene-
mies.

pro-

proprietors thereof, that is to say, at L. aforesaid, in the parish, &c. aforesaid; of all which premises the said George afterwards, to wit, on the same day and year last aforesaid, at L. aforesaid, in the parish, &c. aforesaid, had notice: and, by reason of the premises, the said George then and there became liable, and ought to have paid to the said Joachim and Noel a large sum of money, to wit, the said sum of one hundred and twelve pounds, so by him insured as aforesaid, according to the form and effect of the said writing or policy of assurance, and his said promise and undertaking so by him made in that behalf as aforesaid, to wit, at London aforesaid, in the parish and ward aforesaid. (2d Count like the first, till you come to this mark x, then proceed thus): And the said Joachim and Noel further say, that afterwards, to wit, on the thirtieth of April in the said A. D. 1780, *divers goods and merchandizes* of great value, to wit, of the value of five hundred and twenty pounds, of like lawful money, were loaden on board the said ship, to be carried in the said ship on the voyage in the said last mentioned writing or policy of assurance mentioned, and remained on board thereof until the loss thereof hereinafter mentioned, and that the said last mentioned writing or policy of assurance, so made as last aforesaid, was made for the use, benefit, risk, and account of the owners of such goods and merchandizes last mentioned, that is to say, at London aforesaid, in the parish and ward aforesaid, &c.; (then go on from this mark + to the end of the Count, then add a Count for money had and received). Nevertheless the said George, not regarding his said several promises and undertakings by him made as aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said Joachim and Noel, in this behalf hath not paid to the said Joachim and Noel, or to either of them, the said several sums of money, or either of them, or any part thereof, (although afterwards, to wit, on the twenty-fourth of February A. D. 1781, and often since, at L. aforesaid, at the parish, &c. aforesaid, requested so to do,) but to pay the same to them, or either of them, he the said George hath hitherto wholly refused, and still doth refuse, to the damage of the said Joachim and Noel of l.; and therefore they bring suit, &c. Pledges, &c.

On the goods,

And the said George Cawthorne, by Robert Ellis his attorney, *Demures* comes and defends the wrong and injury, when, &c; and as to *thereto.* the first Count of the said declaration saith, that the said first Count, and the matters therein contained, in manner and form as the same are above pleaded and set forth, are not sufficient in law for the said Joachim and Noel to have their aforesaid action thereof, in that respect, maintained against him; to which said first Count, and the matter therein contained, in manner and form as the same are above pleaded and set forth, he the said George Cawthorne is not under any necessity, nor in any wise bound by the law of the land, to answer; and this he the said George Cawthorne is ready to verify; wherefore, for want of a sufficient first

Causes of de-
murrer.

no interest.

Demurrer to se-
cond Count.

Causes.

Count to the said declaration in this behalf, he prays judgment as to the said first Count, if the said Joachim and Noel ought to have their aforesaid action thereof maintained against him. And for causes of demurrer in law to the said first Count, according to the form of the statute in such case made and provided, he the said George sets down, and shews to the Court here, the causes following; that is to say, For that it does not appear in or by the said first Count of the said declaration, that the said Joachim or Noel *had any interest* in the said writing or policy of assurance in the said first Count mentioned, or in the goods and merchandizes thereby assured; but on the contrary thereof, it appears in and by the said first Count of the said declaration, that the said writing or policy of assurance in the said first Count of the said declaration mentioned, was made *in trust* for, and for the use, risk, benefit, behalf, and account of Mr. Bulmain and certain other persons who carried on trade and commerce in copartnership in foreign parts, under the style and firm of Gaudin and Enissard, and of certain other persons carrying on trade and commerce in foreign parts, under the style and firm of Seurat and Louvel respectively, according to their respective proportions in the said first Count mentioned: and for that it does not appear, in or by the said first Count of the said declaration, that the said Joachim and Noel have any right of action whatsoever in that respect *in their own right* against the said George Cawthorne, or that they or either of them have sustained any damage or injury by the said capture and loss therein mentioned: and for that there are divers blanks and void spaces in the said first Count of the said declaration, which render the sense thereof wholly vague, uncertain, and obscure: and for that the said first Count of the said declaration is, in many other respects, uncertain, insufficient, and informal, &c. And as to the second Count of the said declaration, the said George Cawthorne saith, that the said second Count, and the matters therein contained in manner and form as the same are above pleaded and set forth, are not sufficient in law for the said Joachim and Noel to have their aforesaid action thereof maintained against him; to which said second Count, and the matters therein contained in manner and form as the same are above pleaded and set forth, he the said George Cawthorne is not under any necessity, nor in anywise bound by the law of the land to answer; and this he the said George Cawthorne is ready to verify: wherefore, for want of a sufficient second Count to the said declaration in this behalf, he prays judgment as to the said second Count if the said Joachim and Noel ought to have their aforesaid action thereof maintained against him. And for causes of demurrer to the said second Count, according to the form of the statute in such case, &c. he the said George sets down, and shews to the Court here, the causes following; that is to say, For that it does not appear in or by the said second Count of the said declaration, that the said Joachim and Noel had any interest in the said writing or policy of assurance in the said second Count mentioned, or in the goods and

and merchandizes thereby assured; but it thereby appears that the said last-mentioned writing or policy of assurance was made for the use, benefit, risk, and account of the owners of such goods and merchandizes in the said second Count mentioned; and for that the particular names of the said owners of the said last-mentioned goods and merchandizes, or any or either of them, are not nor is mentioned, expressed, specified, or declared in or by the said second Count of the said declaration; and, for that it does not appear in or by the said second Count, that the said Joachim and Noel were the owners thereof; and for that it does not appear in or by the said second Count of the said declaration, that they the said Joachim and Noel have any right of action whatsoever in that respect in their own right against the said George, or that they, or either of them, have sustained any damage or injury by the said capture and loss in the said second Count mentioned; and for that there are divers blanks and void spaces in the said second Count of the said declaration, which render the sense thereof wholly vague, uncertain, and obscure; and for that the said second Count of the said declaration is in many other respects uncertain, insufficient, and informal, &c. And as to the said last Count of the said declaration, the said George Cawthorne saith, that he did not undertake or promise in manner and form as the said Joachim and Noel have above in that behalf complained against him; and of this he puts himself upon the country; and the said Joachim and Noel do the like, &c.

C. RUNNINGTOW.

The joinder to the above demurrers was signed by

GEO. WOOD.

I Have considered these demurrers, and am of opinion they will not hold. In the first demurrer three causes are assigned: 1st, Because it does not appear that the plaintiffs had any interest in the policy or the goods insured; 2dly, that no right of action appears in the plaintiffs; 3dly, that there are blanks which render the sense of the declaration in those parts uncertain. As to the first and second causes, I think that by payment of the premium, and making the contract, the plaintiffs have an interest in the policy, and a right of action for a breach of the contract, and that it is sufficient for maintaining the action, that there was a real interest in some body, for whose use the policy was made in the goods laden on board the ship, and lost by the capture. And as to the third cause of demurrer, I do not observe any blanks except in the instrument of insurance, called the policy; and that being the identical contract,

it must be set forth as it is, and the Court will construe it according to the apparent and usual sense in which it has for a great number of years had its effect amongst merchants, and about what there is no difficulty, doubt, or uncertainty. The causes in the second demurrer are the same, except that no names of persons are particularly specified who were owners of the goods; but I think that makes no difference, as it is shewn that goods were laden on board the ship of more value than the sum insured; and that the insurance was made for the benefit of the owners of such goods: for this only became necessary at all since the act of parliament which makes insurance without interest void. The blanks objected to by this demurrer are in the policy, not in the declaration; therefore my opinion is the same as upon the blanks mentioned in the other demurrer.

THOMAS DAVENPORT.

THAT

but now vide. 25. G. 3. C. 44. & *Tracy & Co. v. Edie*
T. Rep. 313. where it is determined that the
 name of an agent must be inserted in
 policy as nomine

Declaration on
two policies of
insurance on
ship and cargo.

THAT whereas, &c. (state the policy in the usual way). And, by the said writing or policy of assurance, the said ship therein mentioned was warranted to proceed on that voyage with sixty men, and that the said ship was equipped with twenty-two guns, eighteen and six pound shot, and sheathed with copper, as by the said writing or policy of insurance, relation being thereunto had, will more fully and at large appear; of which said writing or policy of assurance the said Thomas Parkison afterwards, to wit, on the first of November A. D. 1780, at London aforesaid, in the parish and ward aforesaid, had notice. And thereupon afterwards, to wit, on the same day and year last aforesaid, at London aforesaid, in the parish and ward aforesaid, in consideration that the said William Jolly, at the special instance and request of the said Thomas Parkison, had then and there paid to the said Thomas Parkison a large sum of money, to wit, the sum of twenty-five pounds four shillings of lawful money of Great Britain, as a premium and reward for the insurance of three hundred pounds of and upon the ship in the said writing or policy of assurance mentioned, (and also another large sum of money, to wit, the sum of sixteen pounds sixteen shillings of like lawful money of Great Britain, as a premium and reward for the assurance of two hundred pounds, of and upon goods on board the said ship, for the voyage in the said writing or policy of assurance mentioned,) and had undertaken, and then and there faithfully promised the said Thomas Parkison to perform and fulfil every thing in the said writing or policy of assurance contained, on the part and behalf of the assured to be performed and fulfilled, he the said Thomas Parkison undertook; and to the said William Jolly then and there faithfully promised, that he would become an assurer to the said William Jolly for the said sum of three hundred pounds of and upon the said ship, (and also for the said sum of two hundred pounds of and upon the said goods on board thereof as aforesaid); and the said Thomas Parkison then and there subscribed the said writing or policy of assurance, as such assurer, for the said sum of three hundred pounds (and two hundred pounds respectively) accordingly, that is to say, at London aforesaid, at the parish and ward aforesaid. And the said William Jolly in fact says, that the said writing or policy of assurance so made as aforesaid, (as to the said ship therein mentioned, and valued as aforesaid,) was so made to and for the use, benefit, and risk of himself the said William Jolly, and Peter Masters, Rebecca Elizabeth Beaty, (administratrix of Robert Beaty,) John Wood, John Marlow, Edward Stewart, and Robert Boyd, (and as to the goods on board thereof for the benefit of himself the said William Jolly;) and the said William Jolly, Peter Masters, Rebecca Elizabeth Beaty, John Wood, John Marlow, Edward Stewart, and Robert Boyd, before and at the time of the loss of the said ship hereinafter mentioned, was interested in the said ship valued as aforesaid, (and that the said W. J. before and at the time of the loss hereinafter mentioned, was interested in goods on board

board the said ship to a large amount, to wit, the sum of thirty-three pounds eighteen shillings of like lawful money, that is to say, at London aforesaid, at the parish and ward aforesaid.) And the said William Jolly in fact further says, that the said ship, to wit, on the same day and year last aforesaid, sailed and proceeded from London aforesaid upon the said voyage, in the said writing or policy of assurance mentioned, with sixty men, equipped according to the warranty aforesaid, and sheathed with copper; and that the said ship afterwards, to wit, on the twentieth day of November in the said year of Our Lord 1780, being at Cork, in the said writing or policy of assurance mentioned, and in the course of the voyage therein also mentioned, the said ship afterwards, to wit, on the same day and year last aforesaid, sailed safely from Cork aforesaid, for and towards the West Indies in the said writing or policy of assurance mentioned, (with divers goods on board thereof to a large value and amount, to wit, to the value and amount of thirty-three pounds eighteen shillings of like lawful money, and which had been before that time laden on board the said ship at Cork and London respectively, to be carried in the said ship to and upon the voyage in the said writing or policy of assurance mentioned, that is to say, at London aforesaid, at the parish and ward aforesaid.) And the said William Jolly in fact further says, that the said ship never did arrive at any of the West India islands in the said writing or policy of assurance mentioned, but, on the contrary thereof, the said ship (with the said goods on board thereof as aforesaid) sailed and proceeded in and upon the high seas after her departure from Cork aforesaid, and before her arrival at any of the West India islands in the said writing or policy of assurance mentioned, to wit, on the fifth day of January in the year of Our Lord 1781, was, in and upon the high seas, with force and arms, and in an hostile manner, attacked, conquered, taken, and carried away by certain persons to the said William Jolly unknown, and thereby the said ship and goods on board thereof, to the value aforesaid, became and were totally lost to the proprietors thereof, that is to say, at London aforesaid, in the parish and ward aforesaid; of all which premises the said Thomas Parkison afterwards, to wit, on the same day and year last aforesaid, there had notice: and by reason thereof the said Thomas Parkison then and there became liable to pay, and ought to have paid to the said William Jolly the said sums of three hundred pounds (and two hundred pounds), making together the sum of five hundred pounds of like lawful money, according to the form and effect of the said writing or policy of assurance, and of his promises and undertakings in that behalf as aforesaid, that is to say, at London aforesaid, in the parish and ward aforesaid. And whereas also, before the making of the promise of the said Thomas Parkison hereinafter next mentioned, to wit, on the fourteenth day of August in the year of Our Lord 1780, at London aforesaid, in the parish and ward aforesaid, he the said William Jolly had caused to be made a certain

2d Count on a different ship, and on a different voyage.

certain other writing or policy of assurance, for the assurance of a certain other ship called the Mary, of great value, to wit, of the value of other four thousand pounds of like lawful money, and of divers goods of great value, to wit, of the value of other three thousand three hundred and eighteen pounds of like lawful money on board thereof, on a voyage at and from London to Cork and the West India islands, with liberty to call at St. Eustatia; upon which said last mentioned writing or policy of assurance, he the said Thomas Parkifon, before the time of making his promise and undertaking hereinafter mentioned, to wit, on the same day and year last mentioned, at London aforesaid, in the parish and ward aforesaid, had become an assurer to the said William Jolly for the (several) sums of three hundred pounds upon the ship (and two hundred pounds upon the goods on board thereof). And whereas also, before the making of the promise of the said Thomas Parkifon hereinafter mentioned, the said last-mentioned ship called the Mary, (with goods on board thereof as last aforesaid in that voyage), to wit, on the fifth day of January in the said year 1781, was taken by certain persons to the said William Jolly unknown, and thereby (together with the goods on board) was lost to the proprietors thereof, to wit, at London aforesaid, at the parish and ward aforesaid; of all which last-mentioned premises be the said Thomas Parkifon afterwards, to wit, on the sixth day of March in the said year of Our Lord 1781, there had notice: and the said Thomas Parkifon being such assurer as last aforesaid, and the said ship being so lost as last aforesaid, he the said Thomas Parkifon in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, at London aforesaid, in the parish and ward aforesaid, undertook, and to the said William Jolly then and there faithfully promised to pay him one hundred pounds per cent. upon his subscriptions to the said last mentioned writing or policy of assurance, in one month from the said sixth day of March in the said year of Our Lord 1781; by reason whereof the said Thomas Parkifon became liable to pay to the said William Jolly the (several) sums of three hundred pounds (and two hundred pounds so subscribed by him as last aforesaid, amounting in the whole to the sum of five hundred pounds), in one month from the said sixth day of March in the said year of Our Lord 1781, that is to say, at London aforesaid, at the parish and ward aforesaid.

I Have joined the two policies together (notwithstanding the interests are different) in the declaration according to practice. But though such practice is convenient by way of saving multiplicity of suits, yet, as I cannot think it good in point of law, as it is joining of causes of action in different rights of the same action, I would advise application to defendant's attorney to consent not to take any advantage of it that cannot

be refused, as it is for the benefit of all. The third special Count is upon the adjustment, and is the Count upon which I would recommend the plaintiffs to found their complaint, without going upon either of the others. Upon that Count, proof of the subscription, and of the loss, is sufficient to throw the case upon defendant to prove imposition, with regard to the circumstances, in order to get rid of their adjustment; plaintiffs, how-

3d Count.

*upon the
adjustment*

however, must be prepared to prove the whole of the case, according to the first and second Counts, in case the Court should force him to prove the circumstances, under the idea that they are not admitted by the adjustment: as to the strict merits, I am clear, from the face of the protest, that the policy is vacated

by the cruising after the Spanish ship, and thereby deviated from the direct course of the voyage. But I contend, that if all the facts in the protest were known to the underwriter at the time they settled the adjustments, they have waived any benefit they might otherwise have had.

LONDON, to wit. W. B. complains of J. N. &c. being, &c. for that whereas the said W. on the twentieth day of August A. D. 1776, at L. aforesaid, in the parish of St. Mary le Bow, in the ward of Cheap, according to the custom of merchants, did cause to be written and made a certain writing of insurance, commonly called a policy of insurance, whereby the said W. by the name of Mr. William Bond, as well in his own name as for and in the name and names of all and every other person or persons to whom the same did, might, or should appertain, in part or in all, did make insurance, and caused himself, and them and every of them, to be insured, lost or not lost, *as and from Jamaica to London, warranted to have sailed on or before the first day of August 1776*, upon any kind of goods and merchandizes, and also upon the body, tackle, apparel, ordnance, munition, artillery, boat, and other furniture of and in the good ship or vessel called the *Capel*, whereof was master, under God, for that voyage Captain C. or whosoever else should go for master in the said ship, or by whatsoever other name or names the said ship, or the master thereof, was or should be named or called; beginning the adventure upon the said goods and merchandizes from the loading thereof on board the said ship, at Jamaica, upon the said ship, &c. and so should continue and endure during her abode there upon the said ship, &c. and further until the said ship, with all its ordnance, tackle, &c. &c. and goods and merchandizes whatsoever, should be arrived at London upon the said ship, &c. until she had moored at anchor twenty-four hours in good safety; and upon the goods and merchandize until the same should be there discharged and safely landed; and it should be lawful for the said ship, &c. in that voyage to proceed and sail to, and touch and stay at, any ports or places whatsoever, without prejudice to that insurance; the said ship, &c. goods, and merchandizes, for so much as concerned the assured, by agreement between the assured and assurers, in that policy were and should be valued at l.: touching the adventures and perils which they the assurers were contented to bear and take upon them in that voyage, they were of the seas, men of war, fire, enemies, frigates, rovers, thieves, jettizons, letters of mart and countermart, surprisals, takings at sea, arrests, and detainments of all kings, princes, and people of what nation, condition, or quality soever, barratry of the master and mariners, and of all other perils, losses, and misfortunes that had or should come, to the detriment, hurt, or damage of the said

Declaration on a policy of insurance on ship and cargo, &c.

1st Count, on ship and cargo from St. Anne's Bay to London, the ship having been captured by the Americans, stating the ship to have sailed with a convoy.

Vide Cowp. 601.

said goods and merchandizes, ship, &c. or any part thereof; and in case of any loss or misfortune, it should be lawful to the assured, their factors, servants, and assigns, to sue, labour, and travel for, in and about the defence, safeguard, and recovery of the said goods, merchandizes, ship, &c. or any part thereof, without prejudice to the insurance; to the charges whereof they the said insurers would contribute, each one according to the rate and quantity of his sum therein insured. And it was agreed by them the assurers, that that writing or policy of assurance should be of as much force and effect as the surest writing or policy of assurance theretofore made in Lombard-street, or in the Royal Exchange, or elsewhere in London; and so they the said assurers were contented, and did by the said policy of assurance promise and bind themselves, each one for his own part, their heirs, executors, and goods, to the assured, their executors, administrators, and assigns, for the true performance of the premises, confessing themselves paid the condition due to them for that assurance by the assured, *at and after the rate of fifteen guineas per cent. to return five per cent. if the departed with convoy, and eight per cent. without convoy, for the voyage, and arrived; and by a certain memorandum thereunder written, corn, fish, salt, fruits, flour, and seed, were warranted free from average, unless general, or the ship were stranded; sugar, tobacco, hemp, flax, hides, and skins warranted free from average, under five per cent. and all other goods, also the ship and freight, were warranted free from average, under three per cent. unless general, or the ship was stranded; and by a certain other memorandum under the said policy, it was declared, that the following insurance was one half of forty hogheads of sugar from the estate of S. H. deceased, and consigned to the said assured, and valued at twelve pounds ten shillings per hoghead, marked S. H. the other half being insured by ship or ships the ninth day of December 1776, and on rum at nine pounds per puncheon, as by the said writing or policy of insurance more fully appears; of which said writing or policy of insurance he the said Joseph afterwards, to wit, on the said twentieth day of August in the year aforesaid, at London aforesaid, in the parish and ward aforesaid, had notice: and thereupon afterwards, to wit, on, &c. at, &c. in consideration that the said W. at the special instance and request of the said Joseph, had then and there paid to the said Joseph the sum of fifteen guineas as a premium, and received for the insurance of one hundred pounds of and upon the premises mentioned in the said writing or policy of insurance as to the said one half of forty hogheads of sugar and rum, and had then and there faithfully promised to perform and fulfil all things in the writing or policy of insurance contained on his part and behalf to be performed and fulfilled as to the said one half of forty hogheads of sugar and rum, he the said Joseph undertook, and to the said W. then and there faithfully promised, that the said Joseph would become an assurer to the said William for the said one*

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hundred pounds of and upon the said premises mentioned in the said writing or policy of insurance as to the said one half of forty hogsheads of sugar and rum, and would perform and fulfil all things in the writing or policy of insurance on his part and behalf to be performed and fulfilled, as such assurer, as to the said one hundred pounds as aforesaid: and the said W. further saith, that he the said W. at the time of the making the said writing or policy of insurance, and continually from thence until and at the time of the capture and loss hereinafter mentioned, was interested in the said sugars and rum to a large value and amount, to wit, the value of all the monies ever insured thereon, to wit, at London aforesaid, &c.: and the said W. further says, that the said ship in the said writing or policy of insurance mentioned, with the said sugars and rum on board thereof, before the said first day of August in the said year of Our Lord 1776, to wit, on the twenty-first day of July in the year aforesaid, set sail and departed from St. Anne's Bay at Jamaica aforesaid, where she had been laden and had taken on board her cargo for the said voyage, ready to perform the said voyage in the said policy mentioned, and proceeded from St. Anne's Bay aforesaid on the said voyage, to a certain place on the high seas near thereto, called Bluefields, in order to join, and for the purpose of joining, a certain convoy there, which was then about to sail from thence to Great Britain, and did then and there join the said convoy; and afterwards, to wit, on the ninth day of August in the year aforesaid, the said ship in the said writing or policy of insurance mentioned, with the said sugars and rum on board thereof, set sail and departed from Bluefields aforesaid, in company with divers other ships and vessels, and with and under the said convoy on her said voyage to the port of L. aforesaid: and the said W. further saith, that the said ship, with the said sugars and rum on board, afterwards, and before her arrival at London aforesaid, to wit, on the first day of September A. D. 1776, then sailing and proceeding on her said voyage in the high seas, was with force and arms, and in a hostile manner, attacked, conquered, and taken by certain rebellious American subjects of our lord the king, and by means thereof the said sugars and rums became and were wholly lost to the said W.; of all which said premises the said Joseph afterwards, to wit, on the first day of October in the year aforesaid, at London aforesaid, in the parish and ward aforesaid, had notice; and was then and there requested by the said William to pay him the said sum of one hundred pounds so insured as aforesaid, and which the said Joseph ought to have paid to the said William, according to the form and effect of the said policy, and his said promise and undertaking so made as aforesaid. And whereas also the said W. on, &c. at, &c. according to the custom of merchants, did cause to be written and made a certain other writing of insurance, (the policy set out the same as in first Count,) as by the said writing or policy of assurance last mentioned more fully appears;

ad Count on same policy, the ship having been captured by pirates, stating ship to have sailed with a convoy.

of which said last mentioned writing or policy of assurance the said Joseph, to wit, on the said twentieth day of August in the year aforesaid, at, &c. had notice; and thereupon afterwards, to wit, on the same day and year last aforesaid, at, &c. in consideration that the said W. at the special instance and request of the said Joseph, had then and there paid to the said Joseph the sum of other fifteen guineas as a premium or reward for the assurance of one hundred pounds of and upon the premises mentioned in the said writing or policy of insurance last mentioned as to the one half of forty hogshheads of sugar and rum, and had then and there undertaken, and faithfully promised the said Joseph, to perform and fulfil all things in the said last-mentioned policy of assurance, contained on the part and behalf of the said last mentioned assured, to be performed as to the said one half of forty hogshheads of sugar and rum last mentioned, he the said Joseph undertook, and to the said William then and there faithfully promised, that he the said Joseph would become an assurer to the said William for the said one hundred pounds of and upon the premises mentioned in the said writing or policy of assurance last mentioned, as to the said last mentioned one half of forty hogshheads of sugar and rum, and would perform and fulfil all things in the said last mentioned writing or policy of assurance contained on his part and behalf to be performed and fulfilled, as such assurer, as to the said one hundred pounds last mentioned; and the said Joseph then and there became and was an assurer to the said William, and then and there subscribed the said last mentioned writing or policy of assurance, as such assurer, as to the said last mentioned one hundred pounds as aforesaid: and the said W. further says, that he the said William, at the time of making the said last mentioned writing or policy of assurance, and continually from thence until and at the time of the capture and loss hereinafter mentioned, was interested in the said last mentioned sugar and rum to a large value and amount, to wit, the value and amount of all the money ever insured thereon, i. e. at, &c.: and the said W. further says, that the said ship in the said last mentioned writing or policy of assurance mentioned, with the said sugar and rum on board thereof, before the said first day of August 1776, to wit, on the said twenty-sixth day of July in the year last aforesaid, set sail and departed from St. Anne's Bay, at Jamaica aforesaid, where she had been loading and taking on board her cargo for the said voyage, ready to perform the said voyage in the said last mentioned policy, and proceeded from St. Anne's Bay aforesaid, on the said last mentioned voyage, to a certain place on the high seas, near thereto, called Bluefields, in order to join, and for the purpose of joining, the said convoy there, which was then about to sail from thence to Great Britain, and did then and there join the said convoy; and afterwards, to wit, on the said ninth day of August in the year aforesaid, the said ship, in the said last mentioned writing or policy of insurance mentioned, with the sugars and rum on board thereof, set sail and departed from Bluefields aforesaid, in company with
divers

divers other ships and vessels, and with and under the said convoy on the said voyage, for the port of London aforesaid : and the said William further says, that the said last mentioned ship, with the said sugars and rum on board thereof, afterwards, and before their arrival at London aforesaid, to wit, on the said first day of September in the said A. D. then sailing and proceeding on her said voyage last mentioned, on the high seas, was with force and arms, and in a hostile manner, attacked, conquered, *taken by pirates*; and by means thereof the said sugars and rum last mentioned became and were wholly lost to the said W. B. ; of all which said premises last aforesaid the said J. afterwards, to wit, on the first day of October in the year aforesaid, at, &c. had notice ; and was then and there requested by the said W. to pay to him the said last mentioned sum of one hundred pounds so assured as last aforesaid, and which the said J. ought to have paid to the said W. according to the form and effect of the said last mentioned policy, and his said promise and undertaking so made as last aforesaid. And whereas also the said W. on, &c. at, &c. did ^{3d} cause to be written or made a certain other writing or policy of assurance, (the policy set out as before,) as by the said writing or policy of assurance last mentioned more fully appeared ; of which said last mentioned writing or policy of assurance he the said Joseph afterwards, to wit, on, &c. at, &c. had notice ; and thereupon afterwards, to wit, on the said day and year last aforesaid, at, &c. in consideration that the said W. at the special instance and request of the said John, had then and there paid to the said John the sum of other fifteen guineas, as a premium or reward for the assurance of one hundred pounds of and upon the premises mentioned in the said writing or policy of assurance last mentioned, as to the said one half of the said forty hogheads of sugars and rum last mentioned, and had then and there undertaken and faithfully promised the said Joseph to perform and fulfil all things in the said last mentioned writing or policy of assurance contained on the part and behalf of the assureds to be performed and fulfilled as to the said one half of forty hogheads of sugar and rum last mentioned, he the said Joseph undertook, and to the said W. then and there faithfully promised, that he the said Joseph would become an assurer to the said William for the said one hundred pounds last mentioned of and upon the premises mentioned in the said writing or policy of assurance mentioned, as to the said one half of forty hogheads of sugar and rum last mentioned, and would perform and fulfil all things in the said last mentioned writing or policy of assurance on his part and behalf to be performed and fulfilled, as such assurer, as to the said one hundred pounds as last mentioned : and the said W. further says, that the said William, at the time of the making the said last mentioned writing or policy of assurance, and continually from thence, until and at the time of the capture and loss herein-after next mentioned, was interested in the said last mentioned sugar and rum to a large value and amount, to wit, to the value and amount of all the monies insured thereon, that is to say, at

Count like
the first, omit-
ting that the ship
sailed with a
convoy.

L. aforesaid, &c. : and the said W. further says, that the said ship in the said last mentioned writing or policy of insurance mentioned, with the said sugars and rum last mentioned on board thereof, before the said first day of August A. D. 1776, to wit, on the twenty-sixth day of July in the year aforesaid, *set sail and departed from Jamaica aforesaid for and upon the said last mentioned voyage*; and the said last mentioned ship, with the sugars and rum on board thereof, afterwards, and before her arrival at L. aforesaid, to wit, on the first day of September A. D. 1776, then sailing and proceeding on her said voyage on the high seas, was with force and arms, and in a hostile manner, attacked, conquered, and taken by certain rebellious American subjects of our said lord the king, and by means thereof the said sugars and rum became and were wholly lost to the said W. B. ; of all which premises last aforesaid the said Joseph afterwards, to wit, on the said first day of October in the year last aforesaid, at, &c. had notice; and was then and there requested by the said W. to pay him the said last mentioned sum of one hundred pounds so assured as last aforesaid, and which the said Joseph ought to have paid to the said William, according to the form and effect of the said last mentioned policy, and his promise and undertaking so made as last aforesaid. (Fourth Count, money had and received, one hundred pounds; and breach.)

Plea 1st,
General Issue.

2d Plea, as to
last Count, ten-
der of fifteen
guineas.

And the said Joseph, by T. H. his attorney, comes and defends the wrong and injury, when, &c. and as to the said promise and undertaking in the said declaration first, secondly, and thirdly mentioned, and also as to the said promise and undertaking in the said declaration last above mentioned, says, that he did not promise and undertake in manner and form as the said William hath above complained against him; and of this he puts himself upon the country, &c. ; and the said W. doth the like. And as to the said promise and undertaking in the said declaration last above mentioned as to fifteen guineas, parcel of the said one hundred pounds therein contained, the said Joseph says, that the said William ought not to have or maintain his said action to recover any damages by reason of the non-payment of the said sum of fifteen guineas, because he says, that after the making of the said promise and undertaking in the said declaration last above mentioned as to the said fifteen guineas, and before the day of exhibiting the bill of the said W. to wit, on the first day of October A. D. 1776, at, &c. he the said Joseph tendered and offered to pay to the said W. the said fifteen guineas, which the said W. then and there refused to accept from the said Joseph: and the said J. further says, that he the said Joseph, from the time of the making of the promise and undertaking in the said declaration lastly mentioned as to the said fifteen guineas, hitherto always hath been, and still is, ready to pay to the said William the said fifteen guineas; and the said Joseph brings the same into court, ready to be paid to the said W. if the said W. would accept the same from the said Joseph; and this he is ready to verify; wherefore he prays judgment,

ment, if the said W. ought to have his aforesaid action for recovery of damages, by reason of the non-payment of the said sum of fifteen guineas, against him, &c.

And hereupon the said W. freely accepts the said sum of fifteen guineas so brought here into court; wherefore the said William is satisfied as to the said fifteen guineas, and the said Joseph is thereof acquitted; and for trying the said issue above joined, let a jury come before our lord the king at Westminster, on next after by whom, &c. who neither, &c. to recognize, &c. because as well, &c. the same day is given to the said parties there.

Acceptance of the fifteen guineas, and venire awarded to try the other issue.

LONDON, to wit. T. W. and H. K. complain against J. B. &c. for that whereas, on the seventh day of March 1774, to wit, at the parish of St. Mary le Bow in the ward of Cheap, the said T. H. *to and for the use and benefit of one J. H.* according to the usage and custom of merchants, caused to be made a certain writing or policy of assurance, purporting thereby, and containing therein, that the said T. W. and H. K. as well in their own names as in the name or names (here set out the policy and premium); of which said writing or policy of assurance he the said James afterwards, to wit, on the same day and year aforesaid, at London aforesaid, had notice; and thereupon afterwards, to wit, on the same day and year aforesaid, at London aforesaid, in the parish and ward aforesaid, in consideration that the said T. and H. at the special instance and request of the said James, had then and there paid to the said James fifty-two pounds ten shillings as a premium or reward for the insurance of two hundred pounds of and upon the said *ship and freight*, and had undertaken, and then and there faithfully promised the said James, to perform and fulfil all things in the said writing or policy of assurance contained on the part of the assurers to be performed and fulfilled; he the said J. undertook, and then and there promised the said T. and H. that he the said J. would become an assurer to the said T. H. for the sum of two hundred pounds upon the said ship and freight, and that he would perform and fulfil all things in the said writing or policy of assurance contained on his part and behalf to be performed and fulfilled, as such assurer, as to the said two hundred pounds, and then and there subscribed the said writing or policy of assurance, as such assurer, for two hundred pounds, to wit, at, &c.; and the said T. and H. further say, that the said ship, with divers goods and merchandizes loaded on board her, was sailing and proceeding in the course of her said voyage in the said writing or policy of assurance mentioned; and being so sailing and proceeding as aforesaid, afterwards, and after the making the said policy of assurance, to wit, on the third day of April 1776, the said ship was by force and violence upon the high seas arrested, restrained, and detained by certain people unknown to the

Declaration on a policy of insurance of the ship Molly from Maryland to Cadix, 1st Count, stating the ship to have been arrested and detained by persons unknown to plaintiff on the coast of America.

4d Count on same policy, the ship having been arrested by persons unknown.

said T. and H. on the coast of America, whereby the said ship and freight in the aforesaid policy of assurance mentioned became and was totally lost; and the said T. and H. in fact say, that the interest of the said J. H. in the said ship and the said freight so assured as aforesaid, at the time of making the said writing or policy of assurance, from thence and until, and at the time of the loss aforesaid, amounted to a large sum of money, to wit, to the sum of two hundred pounds so insured as aforesaid, and of all the money ever insured or caused to be insured thereon, &c.; of all which said premises the said J. afterwards, to wit, on the first day of January 1778, at, &c. had notice: and by reason thereof he became then and there liable to pay, and was then and there requested by the said T. and H. to pay to them the said sum of two hundred pounds so by him assured as aforesaid, and which said sum the said J. then and there ought to have paid to the said T. and H. according to the form and effect of the said promise and undertaking so made by the said James in that behalf as aforesaid, to wit, at, &c. And whereas also, on the said seventh day of March 1776, at, &c. the said T. W. and H. K. for and on the behalf of the said J. H. according to the usage and custom of merchants, caused to be made a certain other writing or policy of assurance, purporting thereby, and containing therein (set out policy as before); which said writing or policy of assurance be the said J. afterwards, to wit, on same day and year aforesaid, at, &c. had notice; and thereupon afterwards, to wit, on, &c. at, &c. in consideration that the said T. and H. at the special instance and request of the said James, had then and there paid to the said James the sum of fifty-two pounds ten shillings as a premium and reward for the insurance of two hundred pounds of and upon the said ship and freight in the said last mentioned policy of assurance mentioned, and had undertaken, and then and there faithfully promised the said James, to perform all things in the said policy of assurance mentioned and contained on the part and behalf of the assureds to be performed and fulfilled, he the said J. undertook, and then and there faithfully promised the said T. and H. that he the said J. would become an assurer to the said H. for the said last mentioned sum of two hundred pounds of and upon the said last mentioned ship and freight, and that he would perform and fulfil all things in the said writing or policy of insurance mentioned and contained on his part and behalf to be performed and fulfilled, as such assurer, as to the said sum of two hundred pounds, and then and there subscribed the said last mentioned writing or policy of insurance, as such insurer, &c. to wit, at, &c.: and the said T. and H. further say, that the said last mentioned ship, with divers goods and merchandizes loaded on board, was sailing and proceeding in the course of her said voyage in the said last mentioned writing or policy of insurance mentioned; and being so sailing and proceeding as aforesaid, afterwards, and after the making the said policy of insurance, to wit, on the third day of April 1776, the said ship was by force and violence upon the high seas arrested, restrained,

strained, and detained upon the coast of North America, by certain persons acting under the command and authority of the right honourable the earl of Dummore, his Majesty's then lieutenant and governor-general of the colony and dominion of Virginia, and vice-admiral of the same, whereby the said ship and freight in the last mentioned writing or policy of assurance mentioned, became and were totally lost: and the said T. and H. in fact say, that the interest of the said J. H. in the said last mentioned ship and the said last mentioned freight, so insured as aforesaid, at the time of the making of the said last mentioned writing or policy of insurance, and from thence until and at the time of the last mentioned loss, amounted to a large sum of money, to wit, the sum of other two hundred pounds, so insured as aforesaid, and of all the money ever insured or caused to be insured thereon, at, &c.; of all which premises the said James afterwards, to wit, on the said third day of June 1778, at, &c. had notice: and by reason thereof, he became then and there liable to pay, and was then and there requested by the said J. H. to pay to them the said last mentioned sum of two hundred pounds so by them insured as aforesaid, and which said sum the said James ought to have paid to the said T. and H. according to the form and effect of the promise and undertaking so made by the said James in that behalf, as last aforesaid, to wit, at, &c. And whereas also (another Count, precisely the same as the last, except the following words, instead of those in italic in the last Count: "enemies of our said sovereign lord the king, and who had taken up arms against our said lord the king upon the coast of America." (Money had and received; general breach.)

Drawn by Mr. CROMPTON.

(SET out policy, premium, &c.) And the said D. then and there became an assurer to the said H. and subscribed the said writing or policy of assurance as such assurer, as to the said one hundred pounds: and the said P. in fact says, that the said ship, at the time of making the said writing or policy of assurance, to wit, on the thirtieth day of October, in the year aforesaid, was in safety, to wit, at S. aforesaid, in the said writing or policy of assurance mentioned, and afterwards, i. e. on the second day of November 1762, the said ship, with divers goods and merchandizes on board her, set sail, and departed from S. aforesaid, on her said intended voyage towards C. aforesaid, in the said writing or policy of assurance mentioned: and the said P. further says, that afterwards, and while the said ship was sailing and proceeding on her said intended voyage, and before her arrival at C. aforesaid, i. e. on the tenth day of November 1762, the said ship was with force and arms, and in a hostile manner, attacked, conquered, and taken as a prize by certain enemies of our lord the now king, that is to say, by certain subjects of the French king, then being at enmity and open war with our said lord the now king: and thereupon the said J. H. who was master of the said ship as aforesaid,

Declaration by a part owner of a ship on a policy of insurance against the underwriter, stating that the ship was taken and ransomed, and afterwards was foundered and lost, per quod, &c.

ASSUMPSIT GENERAL.—POLICIES OF ASSURANCE,

faid, afterwards, to wit, on the day and year last mentioned, on behalf of the said P. and the several other owners of shares in the said ship, ransomed the said ship from the aforesaid enemies of our said lord the king for a large sum of money, i. e. for the sum of

1. to be paid by the said P. and the several other owners of shares in the said ship, for the said ransom thereof: and the said P. further says, that afterwards, to wit, on the same day and year last mentioned, the aforesaid ship being so ransomed as aforesaid, and being thereupon restored and delivered back by the said enemies of our said lord the king to the said T. H. for the use of the said P. and to the said other owners of shares in the said ship, the said ship proceeded and sailed on her said intended voyage towards C. aforesaid; and that afterwards, and during the course of that voyage, and before the arrival of the said ship at C. aforesaid, to wit, on the twentieth day of November aforesaid, the said ship, on the high seas, by force and violence of the winds and waves, and by the perils and misfortunes of the sea, foundered, wrecked, and sunk in the sea; and thereby the said ship, and all the interest of the said P. therein became wholly lost to him the said P. to wit, at L. &c.; and the said P. in fact says, that he the said P. at the time of making the insurance aforesaid, and at the time of the said capture, and also at the time of the *total loss* of the said ship, was owner of a large share or part, that is to say, an eighth part of the said ship, and was interested therein to a great value and amount, to wit, to the amount and value of two hundred pounds; and that he the said P. after the said capture and ransom of the said ship, to wit, on the day and year last mentioned, at, &c. was obliged to pay, and did actually pay, as his share or proportion of the said price or expence of ransoming the said ship, upon the capture aforesaid, a large sum of money, to wit, fifty pounds, &c.; of all which premises the said D. afterwards, to wit, on the first day of March 1763, at, &c. had notice: and by reason of the said premises, he the said D. ought, according to the intent and effect of his said promise and undertaking aforesaid, to have paid to the said P. a large sum of money, to wit, fifty pounds, on account of the ransom aforesaid, and the further sum of one hundred pounds on account of the said total loss of the said ship; which said sums of fifty pounds and one hundred pounds make together the sum of one hundred and fifty pounds. Nevertheless, &c.

Declaration on a policy of assurance by the owner of slaves insured from Africa to N. America, stating that the ship was detained by contrary winds, and *per quod* several were obliged to

LONDON, *J.* W. Gregson, &c. &c. complains of Thomas Gilbert, being, &c. for that whereas the said plaintiffs on the third day of July 1781, at, &c. according to the usage and custom of merchants, caused a certain writing or policy of assurance to be made in the name of the said William, but for the use, benefit, and interest, and on the joint account of the said plaintiffs, where- rendered foul and leaky, and by reason of the delay, there was a want of water; of the slaves died, others jumped overboard and perished, and the rest of the crew throw others overboard, for the preservation of their own lives,

by

by the said William, as well in his own name as for and in the name and names of all and every person or persons to whom the same did, might, or should appertain in part or in all, did make assurance, and caused himself and them, and every of them, to be insured, lost or not lost, at and from the coast of Africa, and during his trade and stay there, and to his discharging port or ports in the British West Indies, or conquered islands, upon every kind of goods and merchandizes, and also upon the body, tackle, apparel, ordnance, munition, artillery, boat, and other furniture of and in the good ship or vessel called the Zong, whereof was master, under God, for the voyage, Collingwood, or whosoever else should go for master in the said ship, or by whatsoever other name or names the same ship, or the master thereof, was or should be named or called; beginning the adventure upon the said goods and merchandizes from the loading thereof on board the said ship, and upon the same ship, &c. and should continue and endure, during her abode there, upon the said ship, &c.; and further, until the said ship, with all her ordnance, tackle, apparel, goods, &c. whatever, should arrive at upon the said ship, &c. until she had moored and anchored twenty-four hours in good safety, and upon the goods and merchandizes until the same be there discharged and safely landed; and should be lawful for the said ship, &c. in that voyage to proceed and sail to, and touch and stay at any ports or places whatsoever, without prejudice to that insurance; the said ship, &c. goods and merchandizes, &c. for as much as concerned the assureds, by agreement between the assurers and assureds in this policy, were and should be valued at the sum of upon the whole of the ship, and on goods as interest appeared, valuing slaves at thirty pounds sterling per head, &c. without further account to be given by the assured for the same, touching, &c. insurance twenty pounds per cent; and in case of loss, which God forbid, the assurers not to make up any average loss under five pounds per cent, unless general. In witness whereof, they the assureds had subscribed their names and sums assured in Liverpool: and, by the said writing or policy of assurance, corn, salt, fish, fruit, flour, and seeds, were warranted free from average, unless general, and the ship was stranded; and by the said policy of insurance it was warranted to make up no average loss by trading in boats under ten pounds per cent, and by insurrections under three per cent, as by the said writing or policy of insurance, reference being thereunto had, will more fully and at large appear; of which said writing or policy of insurance the said Thomas afterwards, to wit, on the same day and year last aforesaid, at, &c. had notice; and thereupon afterwards, to wit, on the same day and year aforesaid, at Liverpool, to wit, at London, &c. in consideration that the said plaintiffs, at the special instance and request of the said defendant, had then and there paid to the said defendant the sum of forty guineas, of, &c. as a premium and reward for the assurance of two hundred pounds of and upon the premises aforesaid, mentioned in the said writing or policy of insurance,

rance, and had undertaken, and to the said defendant then and there faithfully promised to perform and fulfil all things contained in the said writing or policy of assurance, on the part and behalf of the insured to be performed and fulfilled, the said defendant undertook, and to the said plaintiffs then and there faithfully promised, that he the said T. would become an assurer for the said sum of two hundred pounds of and upon the premises aforesaid, in the said writing or policy of insurance mentioned, or contained on his part and behalf as such assurer as to the said sum of two hundred pounds to be performed and fulfilled, according to the form and effect of the said writing or policy of assurance, and then and there subscribed the said writing or policy of assurance as such assurer for the said sum of two hundred pounds. And the said plaintiffs further say, that the said ship or vessel called, &c. after the making of the said writing or policy of assurance, to wit, on the sixth day of September in the year aforesaid, was in good safety at the coast of Africa aforesaid, and was then and there loaded with divers negro slaves, to wit, five hundred negro slaves of great value, to wit, of the value of fifteen thousand pounds, for his said voyage. And the said plaintiffs further say, that the said writing or policy of assurance so made in the name of the said W. G. was made for and on behalf, and for the use, interest, and benefit, and on the joint account of the said plaintiffs; and that the said plaintiffs, at the time of making the said writing or policy of assurance, and from that time, until and at the respective times of the damages, loss, and misfortunes hereinafter mentioned, were interested in the said negro slaves so loaden on board the said ship or vessel called the Zong, to a large value, to wit, to the value of all the money by the said plaintiffs ever insured or caused to be insured thereon. And the said plaintiffs further say, that the said ship or vessel called the Zong, with the said negro slaves so loaden on board her as aforesaid, and so being in good safety as aforesaid, and having on board a reasonable and proper quantity of water for such a voyage as aforesaid, afterwards, to wit, on the said sixth day of September 1781, departed and set sail from the coast of Africa aforesaid towards the island of Jamaica in the British West Indies; and the same ship, with the same negro slaves so loaden on board her as aforesaid, sailing and proceeding on her said voyage from the coast of Africa towards the island of Jamaica aforesaid, and before her arrival there, to wit, at divers times before her said arrival there, by the perils of the sea, by violent and contrary winds, currents, and other misfortunes, was rendered foul and leaky, and was delayed, hindered, and retarded in her said voyage; and by reason thereof so much of the water on board the said ship for the said voyage was necessarily consumed and spent on board the said ship, that afterwards, and before the arrival of the said ship or vessel at the said island of Jamaica aforesaid, in her voyage aforesaid, to wit, on the twenty-ninth day of November 1781, a sufficient supply or quantity of water did not remain on board the same ship or vessel for preserving the lives of the master and mariners

riners belonging to the said ship and then on board the same, and of the said negro slaves so loaded and being on board her as aforesaid, for the residue of the said voyage; and by reason thereof afterwards, during the said voyage, and before the arrival of the said ship or vessel at the island of Jamaica aforesaid, to wit, on the said twenty-ninth day of November 1781 aforesaid, and at divers other days and times between that day and the arrival of the said ship or vessel at the island of Jamaica aforesaid, divers, to wit, sixty of the said negro slaves, then being on board the said ship or vessel, perished and died for want of water for their sustenance and support, and were wholly lost to the said plaintiffs; and divers others, to wit, forty other of the said negro slaves so loaded and being on board the said ship or vessel, for want of water for their sustenance and support, and by their extreme thirst and phrenzy occasioned thereby, were compelled to throw themselves, and did throw themselves, into the sea, and thereby perished and were drowned, and totally lost to the said plaintiffs; and the master and mariners, for the necessary preservation of their own lives and the lives of the residue of the said negro slaves on board the said ship or vessel, and which, by reason of the said insufficiency of water, occasioned by the means aforesaid, they could not have otherwise preserved, were obliged to throw overboard into the sea divers, to wit, one hundred and fifty other of the said negro slaves, whereby the said last mentioned negro slaves perished and were drowned in the sea, and were totally lost to the said plaintiffs, whereby a loss above five pounds, to wit, fifty pounds by the hundred for every hundred, of the value of the said negro slaves, so loaded on board the said ship or vessel, and insured as aforesaid, accrued thereon to the said plaintiffs; of all which premises the said defendant afterwards, to wit, on the first day of January 1783, at London aforesaid, in the parish and ward aforesaid, had notice; and by reason thereof, then and there ought to have paid to the said plaintiffs a large sum of money, to wit, the sum of one hundred pounds, in respect of the said sum of two hundred pounds, so by him insured as aforesaid, according to the form and effect of the said writing or policy of insurance, and of his said promise and undertaking in that behalf made as aforesaid. (Count for money had and received.)

LONDON, to wit. M. W. widow, complains of W. B. being, &c. for that whereas the said Mary, on the fifteenth of September 1757, at, &c. aforesaid, according to the usage and custom of merchants from time immemorial used and approved of, caused to be made a certain writing or policy of assurance, purporting thereby and containing therein, that the said Mary W. as well in her own name as for and in the name and names of all and every other person and persons to whom the same did, might, or should appertain, in part or in all, did make assurance, and caused herself and them to be assured, lost or not lost, *for and during the space of one calendar month, from Southampton to Falmouth, and back,*

Declaration on a policy of assurance of a ship for one calendar month, stating that the ship was captured by the French.

back, with liberty to touch at Guernsey, upon the body, tackle, ordnance, apparel, munition, &c. of and in the good ship or vessel called the Happy Return, whereof, &c. beginning the adventure upon the said ship, &c. from and immediately following the third of that then instant September 1757, and so should continue and endure until the said ship, with her said tackle, apparel, &c. should be arrived at the full end and term of one calendar month, and there had moored at anchor twenty-four hours in good safety, (here set out the policy,) as by the said writing or policy of assurance, relation being thereto had, will more fully and at large appear; of which said writing or policy of assurance the said William afterwards, to wit, on the fifteenth of September 1757, at, &c. of and from the said Mary had notice; and thereupon afterwards, to wit, on the day and year last aforesaid, at, &c. (mutual promises): and the said Mary avers, that the said ship, mentioned in the said writing or policy of assurance, before the time of making the said writing, to wit, on the third of September 1757, was in good safety in her said voyage, to wit, at Guernsey aforesaid. And the said Mary further says, that the said ship, before the making of the said writing or policy of assurance, to wit, on the fourth of September in the year aforesaid, departed and set sail from Guernsey, on her said voyage to the port of Southampton aforesaid, and that the said ship never did arrive at the said port of Southampton; but on the contrary thereof, the said ship, sailing and proceeding on her said voyage after her said departure from Guernsey aforesaid, and within the said calendar month mentioned in the said policy, and before her arrival at the said port of Southampton, to wit, on the sixteenth of September in the year aforesaid, on the high seas, was, with force and arms, and in a hostile manner, attacked, conquered, and taken a prize by certain persons, enemies of our lord the now king and his crown of Great Britain, to wit, by certain Frenchmen and subjects of the king of France, and was by them then and there taken, and carried away as such prize, and was thereby wholly lost to the said Mary, the then proprietor thereof; of all which premises, &c. and was then and there requested, &c. (Breach.)

Drawn by MR. WARREN,

Declaration by the assignees of a bankrupt on a policy of assurance on ship and goods, the ship having been lost by the barratry of the master.

LONDON, to wit. John Craven and John Mackintos, assignees of the debts, goods, and effects which were of John Campbell a bankrupt, according to the form of the statute made and now in force concerning bankrupts, complain of George Johnstone, being, &c. for that whereas the said J. Campbell, before he became a bankrupt, to wit, on the fifth of September 1757, at London aforesaid, to wit, in the parish and ward, &c. according to the usage and custom of merchants, caused and procured to be made a certain writing or policy of assurance, purporting thereby, and containing therein, that John Campbell, as well in his own name as for and in the name and names of all and every other person or persons to whom the same did or might belong, in particular

lar or in all, did make assurance, and did cause himself, and every of them to be insured, *lost or not lost, at and from St. Eustatia to the Bay of Honduras, and at and from thence to Rotterdam, upon any kind of goods and merchandizes, and also upon the body, &c.* of and in the good ship and vessel called the Royal Sloop, whereof was master for that present voyage, or whomsoever else should go for master in the said ship, or by whatever other name or names the said ship, or the master thereof, was or should be named or called; *beginning the adventure upon the said goods and merchandizes from the loading thereof on board the said ship as above, or elsewhere, upon the said ship, &c. until she had moored at anchor twenty-four hours in good safety, and upon the goods and merchandizes until the same should be there discharged and safely landed; and it should be lawful to and for the said ship, &c. in that voyage to proceed and sail to, and touch and stay at any ports or places whatsoever, without prejudice to that insurance; the said ship, &c. goods, &c. to be valued, &c. touching, &c. premium forty guineas per cent. in case of loss, the assured to abate two per cent. as by the said writing or policy of assurance more fully appears; under which said writing or policy of assurance a certain memorandum was then and there written, whereby, &c.; of which said writing or policy of assurance the said G. J. afterwards, to wit, on, &c. at, &c. had notice: and thereupon afterwards, and before the said J. C. became a bankrupt, to wit, on the same day and year aforesaid, at, &c. in consideration that the said J. C. at the special instance and request of the said G. J. had then and there paid to the said G. J. the sum of as a premium and reward for the assurance of one hundred pounds upon the premises mentioned in the said writing or policy of assurance, and had then and there undertaken and faithfully promised the said G. J. to perform and fulfil every thing in the said writing or policy of assurance contained, on the part and behalf of the assureds to be performed and fulfilled, he the said G. J. undertook, and to the said J. C. then and there faithfully promised, that he the said G. J. would become an assurer to the said J. C. for the sum of one hundred pounds upon the premises in the said writing or policy of assurance mentioned, and would perform and fulfil every thing in the said writing or policy of assurance contained, on his part and behalf to be performed and fulfilled as such assurer as to the said sum of one hundred pounds. And the said J. C. and J. M. in fact say, that the said ship, in the said writing or policy of assurance mentioned, before the making of the said writing or policy of assurance, was in safety, to wit, at St. Eustatia, in the said writing or policy of assurance mentioned, and afterwards departed and set sail from St. Eustatia aforesaid, and arrived at the Bay of Honduras, in the said writing or policy of assurance mentioned; *and that before the making of the said writing or policy of assurance, divers goods and merchandizes of great value, to wit, of the value of three hundred pounds were laden and put on board the said ship to be carried and conveyed in the said ship from the Bay of Honduras aforesaid to Rotterdam.**

terdam, in the said writing or policy of assurance mentioned; and that the said goods and merchandizes remained and continued on board the said ship from thence until the time of the loss hereinafter mentioned; and that the said J. C. until and at the time of the loss hereinafter next mentioned, was interested in the said premises in the said writing or policy of assurance mentioned, to a large value, viz. to the value of all the monies by him ever insured thereon; and that the said insurance so made as aforesaid, was so made for and on account, and for the use and benefit of the said J. C. to wit, at, &c. And the said J. C. and J. M. further say, that afterwards, to wit, on the twenty-seventh of August in the year aforesaid, the said ship, with the said goods and merchandizes so loaden on board her as aforesaid, departed and set sail from the Bay of Honduras aforesaid, on her said intended voyage towards Rotterdam aforesaid. And the said J. C. and J. M. further say, that afterwards, and before the said J. C. became a bankrupt, and before the arrival of the said ship, and the said goods and merchandizes so loaden on board her as aforesaid, at Rotterdam aforesaid, one John Robinson then being master of the said ship (a), in a barratrous and fraudulent manner, without the knowledge and against the will of the said J. C. took and carried away the said ship with the said goods and merchandizes so on board her as aforesaid (b), and converted and disposed thereof to his own use; and the said J. C. thereby lost and was deprived of the said ship, and the said goods and merchandizes so on board her as aforesaid, and the profits thereof; of all, &c.; and was then and there requested by the said J. C. to pay to him ninety-eight pounds, part of the said one hundred pounds so assured as aforesaid, the residue thereof being to be abated on account of the loss thereof as aforesaid, and which said ninety-eight pounds the said G. J. ought to have paid to the said J. C. before he became a bankrupt, &c. (2d Count differing from the last in particulars mentioned in the margin. 3d Count money had and received; money paid; and breach to the whole.)

(a) Insert in second Count the masters and mariners in and on board the said last-mentioned ship.

(b) Add in second Count, to places unknown to said J. C.

A criminal fraud must be proved in the master; for if the goods are lost by the ignorance or negligence of the master, the underwriters are not liable, since the insured are answerable for the conduct of their servants.

Declaration on a policy of assurance on a ship and goods from Dublin to Faro, (AFTER setting out the policy, and mutual promises, and that plaintiff had paid defendant a premium of five guineas, defendant became assurer for one hundred pounds, go on as follows): And the said plaintiff says, that the said ship, at the time of making the said policy of assurance, was in the port of Dublin, in parts beyond the seas, to wit, on the fourth of October last, the crew, for the preservation of their lives, were obliged to go into Cadiz, and were there seized upon by the king of Spain, and the ship confiscated.

1769, at Dublin aforesaid, and divers goods and merchandizes to the value of one thousand pounds, was shipped and laden on board the said ship, and remained and continued on board the said ship; and that the said ship, with the said goods and merchandizes so being on board her, afterwards, to wit, on the same day and year last aforesaid, according to the intention of the said writing of assurance, set sail and departed from D. aforesaid, in her said voyage towards F. aforesaid; and that the said ship, with the said goods and merchandizes so being on board her, sailing and proceeding on her said voyage, afterwards, and before her arrival at F. aforesaid, to wit, the thirtieth of October 1769, upon the high seas near Cadiz, in the kingdom of Spain, was so broken and shattered, and suffered so much by storms and tempests, and the violence and perils of the seas, that she was thereby disabled and rendered wholly incapable of performing, nor did the said ship perform the rest of the said voyage to F. aforesaid: and the said plaintiffs say, that the said ship being so disabled as aforesaid, the said M. R. her master and mariners belonging to and sailing in her, thereupon, afterwards, to wit, on the day and year last aforesaid, for the preservation of their lives, were obliged to put into Cadiz aforesaid; and that the said ship, with the said goods and merchandizes so laden on board her as aforesaid, together with the master and mariners belonging to the said ship, afterwards, to wit, on, &c. at the said port of Cadiz, by force of arms, and against the will of the said M. R. the master and mariners then belonging to and sailing in the said ship, in a hostile manner, was seized, taken, and detained in the said port of Cadiz, by divers soldiers and mariners belonging to a ship of war in the service of the king of Spain; and the said goods and merchandizes were there confiscated, and thereby became totally lost as to the said plaintiff; of all which premises the said C. afterwards, to wit, on the first of November 1769, at, &c. had notice; and was then and there requested, by the said plaintiffs, to pay to them the sum of ninety-eight pounds, parcel of the said sum of one hundred pounds, deducting the two pounds residue of the said one hundred pounds in respect of the loss aforesaid; which said ninety-eight pounds he the said Charles, according to the form and effect of the said writing or policy of assurance, and of his promise, &c.

AND the said Thomas in fact says, that the said policy of assurance was made by and in the names of the said Thomas and John, for and in trust for J. R. and M. R. to wit, at, &c.: and the said Thomas in fact further says, that the said ship, mentioned in the said policy of assurance, before the time of the making the said writing or policy of assurance, to wit, on the tenth of October 1747, was in good safety in Hamboro', in parts beyond
Declaration on a policy of assurance of a ship, she having been taken by a French privateer and ransomed, and afterwards the ship sprung a leak, and the master was obliged to put into port to refit, and for want of money to deliver, part of the goods insured to defray the expence, and the other part, by reason of the premises, were destroyed.

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the seas, to wit, at the Pells of Hambro' aforesaid; and that afterwards, to wit, on the same day and year last aforesaid, at H. aforesaid, divers goods and merchandizes of the said J. R. to the value of six hundred pounds, *not being corn*, and also divers goods and merchandizes of the said M. R. to the value of other six hundred pounds not being corn, were loaden and put on board the said ship to be carried in the said ship from Hambro' aforesaid, to M. Y. aforesaid, in her said voyage: and the said goods and merchandizes remained and continued laden and on board the said ship from thence until the time of the loss of the said goods and merchandizes hereafter mentioned: and the said F. further says, that the said ship, with the said goods and merchandizes, were so laden and remained on board the said ship, from thence until the time of the loss of the said goods and merchandizes hereafter mentioned: and the said F. further says, that the said ship, with the said goods and merchandizes so laden and remaining on board her, afterwards, to wit, on the fourth of October 1747 new style, departed and set sail from Hambro' aforesaid, on her said voyage to Middle Yell aforesaid; but before the arrival of the said ship, or any part of the said goods and merchandizes hereafter mentioned, at Middle Yell aforesaid, the said ship, with the said goods and merchandizes so being on board her as aforesaid, sailed and proceeded on her said voyage after her said departure from H. aforesaid; and before her arrival at M. Y. aforesaid, to wit, on, &c. at, &c. on the high seas, was, with force and arms, and in a hostile manner, taken and seized as and for a prize by the then enemies of our now lord the king and this his realm, *and then being on board a privateer*, that is to say, by the subjects of the French king, then in open war with our said lord the king and this his realm; and part of the said goods and merchandizes of the said J. R. to wit, to the value of pounds; and also part of the said goods and merchandizes of the said M. R. to wit, of the value of pounds, were then and there, with force and arms, seized, taken, and carried away by the said enemies as and for a prize; and the said ship, with the rest of the said merchandizes remaining on board her, were, with force and arms, kept and detained as and for a prize by the said enemies, from thence until the said M. R. the said master of the said ship, afterwards, to wit, on day of 1747 new style, on the high seas, agreed with the said enemy, to wit, James Angel, then commander of the said privateer, for the ransom of the said ship for a large sum of money, to wit, for the sum of one hundred and eighty guineas of lawful money of Great Britain, and then and there delivered to him a hostage, to wit, one Alexander Colvin, then a sailor of and belonging to, and then on board the said ship, for the securing the payment thereof; which said A. was kept and detained, confined and imprisoned on board the said privateer, and in the kingdom of France, by reason thereof, for a long time, to wit, from thence until the day of then next following, when the said ransom money was paid; and the owner of the said ship

ship called the Adventure was put to great charges for and about the maintenance and discharge of the said A. from the said confinement, and for and about his return home from thence. And the said T. L. further saith, that after the discharge of the said ship as aforesaid, the same ship, sailing and proceeding in the said voyage, was, by force and violence of the wind and weather, and by misfortune sprung a leak, and was greatly damaged, and wanted necessary repairs and amendments, without which the said ship could not safely proceed on and finish her said voyage; and the said residue of the said goods and merchandizes so remaining on board her as aforesaid, were thereby greatly damaged; by reason whereof the said ship was obliged to put into a bay on the coast of Norway, called S. in order to take care of her said cargo, and to get the said ship repaired; and the said master took care of the said cargo, and procured the said ship to be repaired; for the payment of the charges whereof, the said M. R. the said master, not having money on board, was obliged to deliver, and did there deliver, other parts of the said goods and merchandizes in satisfaction of the said charges; and, at the end of the said voyage, the rest of the said goods and merchandizes, for the causes aforesaid, became and were of very little value; of which the said defendant afterwards, to wit, on the first of June 1748, at, &c. had notice, and was then and there requested by the said plaintiffs to pay to them one hundred and seventeen pounds twelve shillings, parcel of the said one hundred and twenty pounds assured by the said F. as aforesaid; pounds, the residue of the said sum of one hundred and twenty pounds; being to be abated to the said F. in respect of the said loss, &c. (Another Count alleging a total loss.)

R. DRAPER.

LONDON, to wit. Plaintiff complains of defendant, being, &c. for that whereas one T. C. by the name and description of T. C. &c. on the twenty-fourth of January 1770, at London aforesaid, to wit, in the parish of St. Mary le Bow in the ward of Cheap, by his certain writing obligatory then and there made, and sealed with the seal of the said T. and which the said plaintiff now brings here into court, the date whereof is the same day and year aforesaid, acknowledged himself to be held and firmly bound to the said plaintiff, by the name and description of J. W. of, &c. in the sum or penalty of two thousand pounds, of, &c. to be paid to the said plaintiff, or his certain attorney, executors, administrators, or assigns, whenever he the said T. should be thereto afterwards requested, with and under a certain condition thereto subscribed, reciting that the said plaintiff had on the day of the date of the said writing obligatory lent unto the said Thomas the sum of one thousand pounds upon the merchandizes and effects laden and to be laden on board the good ship or vessel called the of the burthen of tons, or thereabouts, in the river Thames, whereof the said Thomas was commander; there-
Declaration upon an insurance of money lent on respondentia on ship and goods going to the East Indies; which ship foundered at sea before her arrival, 19. G. 3. c. 37. f. 5. 3. Burr. 1394.

fore the condition of that obligation was such, that if the said ship and vessel did and should, with all convenient speed, proceed and sail from and out of the said river Thames, upon a voyage to any ports or places, to the East Indies, or elsewhere beyond the Cape of Good Hope, and from thence did and should sail and return into the said river of Thames at or before the end or expiration of thirty-six calendar months, to be accounted as aforesaid from the day of the date of the said writing obligatory, and that without deviation (the dangers and casualties of the seas only excepted,); and if the said Thomas, his heirs, executors, and administrators, did and should, within thirty days next after the said ship or vessel should arrive in the said river of Thames from the said voyage, or at the end and expiration of the said thirty-six calendar months, to be accounted as aforesaid, which of the said times should first and next happen, well and truly pay, or cause to be paid unto the said plaintiff, his executors, administrators, and assigns, the sum of one thousand two hundred pounds of lawful money of Great Britain, together with ten pounds of like lawful money by the calendar month, and so proportionately for a greater or lesser time than a calendar month, for all such time and so many calendar months as should be elapsed and run out of the said thirty-six calendar months over and above twenty calendar months, to be accounted from the day of the date of the said writing obligatory; or if in the said voyage, or within the said thirty-six calendar months, to be accounted as aforesaid, an utter loss of the said ship or vessel, by fire, enemies, men of war, or any other casualties, should unavoidably happen, and the said T. his heirs, executors, administrators, and assigns, did and should, within six calendar months next after such loss, pay and satisfy to the plaintiff, his executors, administrators, and assigns, a just and proportionable average on all the goods and effects of the said Thomas carried from England on board the said ship or vessel, and on all other goods and effects of the said Thomas which he should acquire during the said voyage, and which should be unavoidably lost, then the said obligation to be void and of no effect, or else to stand in full force and virtue, as by the said writing-obligatory, and the condition thereof thereunder written, reference being thereunto had, appears: and the said plaintiff avers, that the said plaintiff, at the making of the said writing obligatory, to wit, on the twenty-fourth of January 1776, at, &c. did lend to the said J. C. the sum of one thousand pounds, at respondentia upon the merchandizes and effects then laden or to be laden on board the said ship, and upon the terms, stipulations, and agreements in the said condition specified: and the said plaintiff further says, that after the making of the said writing obligatory and condition thereof, and after the lending of the said one thousand pounds as aforesaid, to wit, on the twenty-sixth of January 1776, at, &c. he the said plaintiff, according to the custom of merchants from time immemorial used and approved of, caused to be made a certain writing or policy of assurance, purporting thereby, and containing therein, that the said plaintiff, as well

well in his own name as for and in the name and names of all and every other person or persons to whom the same did, might, or should appertain, in part or in all, did make assurance, and cause himself and them; and every of them, to be insured, lost or not lost, at and from London to all or any ports or places whatsoever in the East Indies, China, Persia, or elsewhere beyond the Cape of Good Hope, forward and backward, during her stay at each port or place, until her safe arrival back at London, upon any kind of goods and merchandizes whatsoever laden or to be laden on board the said good ship or vessel called the A. B. whereof was master under God for that voyage Captain J. Compton, or whoever else should go for master in the said ship or vessel, as the master thereof should be named or called; beginning the adventure upon the said goods and merchandizes from and immediately following the adventure thereof on board the said ship; and so should continue and endure until the said ship, with the said goods and merchandizes whatsoever, should be arrived at all or any ports or places whatsoever as therein above mentioned, and back at London, and the same should be there safely landed; and it should be lawful for the said ship in that voyage to stop and stay at any port or place whatsoever, without being deemed any deviation, and without prejudice to that insurance; and the said goods and merchandizes, by agreement, were and should be upon money lent at respondentia; and in case of total loss, a bond or bonds for the same should be deemed sufficient proof of interest to recover that insurance touching the adventure, &c. (in the usual form) at and after the rate of seven pounds per cent.; and by the said writing or policy of assurance, torn, &c. as by the said writing or policy of assurance, relation being thereunto had, more fully appears; of which said writing or policy of assurance the said defendant afterwards, to wit, on the same day and year aforesaid, at, &c. had notice: and thereupon afterwards, to wit, on the same day and year aforesaid, at, &c. aforesaid, in consideration that the said plaintiff, at the special instance and request of the said defendant, had paid to the said defendant the sum of fourteen pounds of, &c. as a premium and reward for the sum of two hundred pounds of and upon the premises mentioned in the said writing or policy of assurance, and had undertaken, and then and there faithfully promised the said defendant, to perform all things contained in the said writing or policy of assurance on the part and behalf of the said plaintiff, as the assured, to be done and performed by the said plaintiff, he the said defendant undertook, and then and there faithfully promised the said plaintiff, that he the said defendant would become an assurer to the said plaintiff for the said sum of two hundred pounds of and upon the premises mentioned in the said writing or policy of assurance, and that he would perform and fulfil all things in the said writing or policy of assurance on his part and behalf, as such assurer, for the said sum of two hundred pounds to be performed and fulfilled, according to the tenor and effect of the said writing or policy of assurance, and then and there subscribed the said writing or policy of

of assurance, as such assurer for the said sum of two hundred pounds. And the said plaintiff further says, that the said ship called the A. B. on the said condition of the said writing obligatory mentioned, and the said ship called the A. B. in the said writing or policy of assurance mentioned, were one and the same ship, and not different ships; and that the voyage in the condition in the said writing obligatory mentioned, and the voyage in, &c. are one and the same voyage, and not different voyages; and that the merchandize and effects in the said condition or writing obligatory mentioned, and the goods and merchandize, &c. are the same goods, wares, merchandizes, and effects; and that the said sum of one thousand pounds in the said writing obligatory mentioned was and is the money insured and intended to be insured in and by the said writing or policy of assurance, and not other or different money, to wit, at, &c. And the said plaintiff further says, that the said ship, with all convenient speed, after the making of the said writing obligatory, did on her said voyage proceed and sail from and out of the said river Thames to a certain place called in the East Indies, in the said condition of the said writing obligatory named, without deviation, and afterwards in the said voyage, to wit, on, &c. did arrive in safety at the said place called in the East Indies aforesaid; and that the said T. C. afterwards, to wit, on the same day and year last aforesaid, did load and cause to be laden on board the said ship at the said place called, &c. in the East Indies, divers merchandizes and effects to be brought from thence by the said ship in the said voyage back to the river Thames aforesaid, and to London aforesaid; and that the said ship afterwards, to wit, on, &c. did sail, proceed, and return with the said merchandizes and effects so laden on board the said ship, without deviation in the said voyage from the said place called in the East Indies, and towards the river Thames and London aforesaid; and that afterwards, and within the said thirty-six calendar months, to be accounted from the day of the date of the said writing obligatory, and whilst the said ship, with the said merchandizes and effects so laden on board the said ship as aforesaid, was sailing and returning in her said voyage upon the high seas from in the East Indies aforesaid, back to the aforesaid river of Thames and London aforesaid, to wit, on the twenty-fifth day of April 1771, the said ship, goods, wares, and merchandize, by and through the force of certain hurricanes of winds, stormy and tempestuous weather, and by and through the mere perils and dangers of the sea, were on the high seas unavoidably wrecked, sunk, and lost; of all which said premises the said defendant afterwards, to wit, on, &c. at, &c. had notice; and was then and there requested by him the said plaintiff to pay to him the said sum of two hundred pounds so by him assured as aforesaid, and which said sum of two hundred pounds the said defendant then and there ought to have paid to the said plaintiff, according to the form and effect of the said writing and policy of assurance, and of his said promise and undertaking to by him made as aforesaid

aid in that behalf, &c. (Breach; money had and received; and breach.)

LONDON, to wit J. L. and D. F. H. complain of R. H. being, &c. for that whereas, on the twenty-third of April 1724, at London aforesaid, to wit, in the parish, &c. one H. C. as agent of, and to and for the use and benefit of the said J. and D. caused to be made a certain writing or policy of assurance, purporting thereby, and containing therein, that the said H. C. as well in his own name as for and in the name and names of all and every (policy of assurance in the usual form, *Cetta to Guernsey*,) one thousand pounds on ship, and five hundred pounds on freight, as by the said writing or policy of assurance, relation being thereto had, may more fully appear; of which said writing or policy of assurance so made or written as aforesaid, the said R. H. afterwards, to wit, on, &c. at, &c. had notice; and thereupon afterwards, to wit, on the same day and year last aforesaid, at, &c. in consideration that the said plaintiffs, at the special instance and request of the said defendant, had paid to the said defendant the sum of pounds of, &c. as a premium or reward for the assurance of pounds of and upon the premises aforesaid contained in the said writing or policy of assurance as to the said ship and freight, each valued as aforesaid, and had undertaken, and then and there faithfully promised the said plaintiffs to do, perform, and fulfil every thing in the said writing or policy of assurance contained on their parts and behalf to be done, performed and fulfilled, as such assured, as to the said ship and freight, he the said defendant undertook, and to the said plaintiff then and there faithfully promised, that he the said defendant would become an assurer to the said plaintiff for the said sum of one hundred and fifty pounds of, &c. upon the premises as aforesaid, and that he would do, perform, and fulfil every thing in the said writing or policy of assurance contained on his part and behalf to be done, performed, and fulfilled, as such assurer, as to the said one hundred and fifty pounds of and upon the said premises, to wit, at, &c.: and the said plaintiffs in fact say, that the said policy of assurance, so made in the name of him the said H. C. was so made in his name to and for the use, benefit, risk, and account of them the said plaintiffs, and that they the said plaintiffs, at the time of making the said writing or policy of assurance, and from thence continually until and at the time of the loss hereinafter next mentioned, were interested in the said premises, in the said writing or policy of assurance mentioned, to a great amount, to wit, to the amount of all and every the sum and sums of money by the said plaintiffs ever insured or caused to be insured. And the said plaintiffs in fact say, that before and at the time of the making of the said writing or policy of assurance, to wit, on the said twenty-third of April 1724, the said ship or vessel, in the said writing or policy of assurance mentioned, was in safety at the port of Cetta in the said writing or policy of assurance mentioned, and that divers goods and merchandizes of

Declaration on a policy of assurance made by an agent. First Count, Loss by barratry of the master generally.

great value, to wit, of the value of forty thousand pounds, were loaden and put on board the said ship, to be carried in the said ship from Cetta aforesaid to Guernsey aforesaid, in the said writing or policy of assurance mentioned, and that the said goods and merchandizes remained and continued on board the said ship from thence until the time of the loss hereinafter next mentioned. And the said plaintiffs further say, that the said ship or vessel, in the said writing or policy of assurance mentioned, afterwards, to wit, on the second of May 1784, with the said goods and merchandizes in and on board her as aforesaid, departed and set sail from the said port of Cetta aforesaid, upon the said intended voyage to Guernsey aforesaid, in the said writing or policy of assurance mentioned x; and that afterwards, and before the arrival of the said ship or vessel, with the said goods and merchandizes so on board her as aforesaid, at Guernsey aforesaid, to wit, on the ninth of June 1784, the said E. A. being then such master and commander of the said ship or vessel, and on board the said ship or vessel, and the said goods and merchandizes so on board her as aforesaid, by and through the fraud and *barratry* of the said E. A. the said master of the said ship or vessel, became and were wholly lost to the said plaintiffs, and the said plaintiffs thereby lost all benefit and profit arising from the same, and the whole freight so insured as aforesaid, to wit, at, &c. in the parish, &c.; of all which premises the said defendant afterwards, and before the exhibiting of the said bill, to wit, on the first of January 1785, at, &c. had notice; and by reason thereof the said defendant became liable to pay, and ought to have paid to the said plaintiffs, the said sum of one hundred and fifty pounds so assured by him as aforesaid of and upon the premises in the said writing or policy of assurance mentioned, according to the form and effect thereof, and of his said promise and undertaking so by him made as aforesaid, in the parish and ward aforesaid. (Second Count same as first down to x.) And the said plaintiffs further say, that the said E. A. being such master and commander of the said last mentioned ship or vessel and on board the same, and before the arrival of the said last mentioned ship or vessel at Guernsey aforesaid, the said E. A. did proceed and sail with the said last mentioned ship or vessel, and the said goods and merchandizes last mentioned being in and on board the same, to and into the port of Plymouth in the county of Devon in this kingdom, without the will, knowledge, or consent of the said plaintiffs. And the said plaintiffs further say, that whilst the said last-mentioned ship or vessel, with the said last-mentioned goods and merchandizes on board her as last aforesaid, remained and continued in the port of Plymouth aforesaid, to wit, on the ninth of June 1784, and on divers other times between that time and the time of the seizure and condemnation of the said ship or vessel hereinafter mentioned, he the said E. A. in a *barratrous and fraudulent manner, and contrary to the form of the statute in that case made and provided*, and without the knowledge, privity, and consent, and against the will of the said plaintiffs or either of them, did unship from and on board the said ship

Second Count,
That the master
of the ship put
some smuggled
brandy on board,
whereby the
ship became for-
feited, and was
afterwards seiz-
ed and con-
demned.

ship or vessel, to be laid on land in the said port of Plymouth aforesaid, divers large quantities of brandy and coffee of and belonging to him the said E. A. and being in and on board the said ship or vessel last mentioned, on the account and adventure of himself the said E. A. and not the property of, or on account or adventure of the said plaintiffs, brought and imported from parts beyond the seas into Great Britain in the said ship or vessel last mentioned, the customs, subsidies, and other duties due and payable to our sovereign lord the now king, not being first paid or lawfully tendered to the collectors of the said customs at Plymouth aforesaid, or to any other person whatsoever there or elsewhere lawfully entitled to receive the same, or to the said collector's deputy with the consent or agreement of the said comptroller or surveyor there, or one of them at least, nor agreed with him for the same at the custom-house, according to the form of the statute in such case made and provided; whereby, and according to the form of the said statute, the said last-mentioned ship became and was forfeited to our lord the king for the cause last aforesaid; and thereupon the said last-mentioned ship or vessel was seized and arrested on the behalf and account, and to and for the use of our said lord the king, and afterwards, to wit, on the twenty-eighth of November 1784, was in due form of law condemned as forfeited, according to the form of the statute in such case made and provided; and by reason of the premises last aforesaid, the last mentioned ship or vessel, by and through the said fraud and barratry of the said master, became and was wholly lost to the said plaintiff, and the said plaintiffs thereby lost all benefit and profit arising from the same, and the whole freight so insured as aforesaid, to wit, at, &c. whereof, &c. and by reason, &c. (Money had and received; an account stated; breach.)

LONDON, to wit. For that whereas the said John, on, &c. at, &c. according to the usage and custom of merchants from time immemorial used and approved of within this kingdom, had caused to be written and made a certain writing of assurance, commonly called a policy of assurance, purporting thereby, and containing therein, that the said plaintiff, as well in his own name as for and in the name and names of all and every other person and persons to whom the same did, might, or should appertain in part or in all, did make assurance, and cause him and them, and every of them, to be insured, lost or not lost, at and from D. to P. upon any kind of goods and merchandizes, and also upon the body, tackle, apparel, ordnance, munition, artillery, boat, and other furniture of and in the good ship or vessel called the Two Brothers, whereof was master under God for that present voyage W. M. or whosoever else should go for the master in the said ship, or by whatsoever other name or names the same ship, or the master thereof, was or should be named or called, &c. &c. (set out the policy being an insurance from Dover to Philadelphia upon the ship Two Brothers, at a certain premium, &c. &c.) as by the said writing or policy of

Declaration on a policy of assurance on a ship and goods, that she foundered and was lost.

assurance, reference being thereto had, may more fully and at large appear; of which said writing or policy of assurance he the said William afterwards, to wit, on, &c. at, &c. had notice; and thereupon afterwards, to wit, on, &c. at, &c. in consideration that the said Thomas, at the special instance and request of the said William, had then and there paid to him the said William the sum of four guineas, that is to say, the sum of four pounds four shillings of lawful money of Great Britain, as a premium or reward for the assurance of two hundred pounds of like lawful money on the said ship and goods mentioned in the said writing or policy of assurance, and had then and there undertaken and faithfully promised the said William to perform and fulfil every thing in the said writing or policy of assurance contained on the part and behalf of the assured to be performed and fulfilled, he the said William undertook, and then and there faithfully promised the said Thomas that he the said William would become an assurer to him the said Thomas of the said sum of two hundred pounds upon the ship and goods aforesaid, and would perform and fulfil all things in the said writing or policy of assurance contained on his part and behalf, as such assurer, to be performed and fulfilled; and the said William then and there became an assurer to the said Thomas, and then and there subscribed the said writing or policy of assurance as such assurer of the said sum of two hundred pounds as aforesaid. And the said Thomas further saith, that before the making of the said writing or policy of assurance, to wit, on, &c. divers goods and merchandizes of a large value were laden on board the said ship or vessel called, &c. in the said writing or policy of assurance mentioned, in the port of D. aforesaid, to wit, at, &c. in, &c. x; and that at the time of the making of the said writing or policy of assurance, and from thence and until and at the time of the loss of the said ship or goods hereinafter mentioned, he the said Thomas was interested in the said ship or vessel, and in the said goods and merchandizes, so laden on board of the said ship or vessel as aforesaid, to a large value, to wit, to the amount of all the money by him ever insured and caused to be insured thereon, to wit, at, &c. in, &c. And the said Thomas further saith, that the said ship or vessel called, &c. with the said goods and merchandizes so laden on board thereof, afterwards, to wit, on, &c. departed and set sail from the port of D. aforesaid in her said intended voyage towards and for Philadelphia in the said writing or policy of assurance mentioned; but that the said ship or vessel did not arrive in safety at P. aforesaid, nor finish her said voyage; but that the same ship, and the said goods and merchandizes so laden on board thereof as aforesaid, afterwards, to wit, on, &c. whilst sailing and proceeding in his said voyage towards and for Philadelphia aforesaid, and before her arrival at P. aforesaid, upon the high seas, by the danger of the seas, and the force and violence of storms and tempests there, was in her said voyage foundered, beat and broken to pieces, sunk, and totally lost in the sea; of all which said premises afterwards, to wit, on, &c. at, &c. had notice, and was then and there

there requested by the said Thomas to pay him the said sum so assured as aforesaid, and which he the said William then and there ought to have paid to the said Thomas, according to the form and effect of the said writing or policy of assurance, and of the said promise and undertaking so by him made in form aforesaid: yet the said William, not regarding his said promise and undertaking so by him made in manner and form aforesaid, but contriving, &c. the said Thomas in this behalf, hath not paid the said sum of two hundred pounds so assured as aforesaid, or any part thereof, to the said Thomas, but he to do this hath hitherto wholly refused, and still refuses so to do. And whereas the said Thomas, on, &c. at, &c. according to the usage, &c. had caused to be written, &c. &c. (Go on verbatim as in the first Count, reciting the policy, till you come to this mark x, then proceed as follows :) And the said Thomas avers, that the said assurance so made by the said Thomas as last aforesaid, was made by him in trust for the use and benefit of A. B. C. D. and E. F. severally and respectively, as to their several and respective interests in the said ship and goods so assured as last aforesaid; and that at the time of the making of the said last-mentioned writing or policy of assurance, and from thence, until, and at the time of the loss of the said last-mentioned ship and vessel, and goods hereinafter mentioned, they the said A. B. C. D. and E. F. were severally and respectively interested in the said last-mentioned ship or vessel, and in the said last-mentioned goods and merchandizes so laden on board of the said last-mentioned ship or vessel as aforesaid, to a large amount, to wit, to the amount of all the money by him the said Thomas, or by the said A. B. C. D. and E. F. or any of them, ever insured or caused to be insured on their respective interests in the said last-mentioned ship or vessel and goods, to wit, at, &c. And the said Thomas in fact further says, that the said last-mentioned ship or vessel called, &c. with the said last-mentioned goods and merchandizes so laden on board thereof as aforesaid, afterwards, to wit, on, &c. at, &c. set sail, &c. &c. (Finish as in first Count to the end. Add the money Counts; in simul computasset; and common breach.)

Second Count,
That assurance
was made in
trust for assu-
reds severally
and respective-
ly.

G. Wood.

LONDON, to wit. For that whereas the said plaintiffs on, &c. according to the usage and custom of merchants from time immemorial there used and approved of, caused to be made a certain writing or policy of assurance, purporting thereby, and containing therein, that the said plaintiffs, as well in their own names as for and in the name or names of all and every other person or persons to whom the same might or did appertain in part or in all, did make assurance, and cause them and every of them to be insured, lost or not lost, at and from M. to N. warranted to sail on or before the fifth day of May 1780, upon any kind of goods, &c. &c. (set out the policy,) as by the said policy, reference being there-to had, may more fully appear; of which said writing or policy

Declaration on a
policy of assur-
ance on a ship
and goods made
with the defend-
ant by an agent
for divers peo-
ple; the ship
was taken by
the enemy.

of assurance he the said George afterwards, to wit, on, &c. at, &c. had notice; and thereupon afterwards, to wit, on, &c. in consideration that the said plaintiffs, at the special instance and request of the said George, had then and there paid the said George a large sum of money, to wit, the sum of two pounds nine shillings of lawful money of Great Britain, as a premium or reward for the assurance of a large sum of money, to wit, the sum of one hundred and twelve pounds of like lawful money, of and upon the premises in the said writing or policy of assurance contained, and had undertaken, and then and there faithfully promised the said George to perform and fulfil all things in the said writing or policy of assurance contained on the part and behalf of the assured to be done and performed, he the said George undertook, and then and there faithfully promised the said plaintiffs that he the said George would become an assurer to the said plaintiffs, to wit, for the said sum of one hundred and twelve pounds, of and upon the premises mentioned in the said writing or policy of assurance, and that he would perform and fulfil all things in the said writing or policy of assurance contained on his part and behalf, as such assurer, as to the said one hundred and twelve pounds, to be performed and fulfilled, according to the form and effect of the said writing or policy of assurance; and the said George then and there subscribed the said writing or policy of assurance, to wit, for the said sum of one hundred and twelve pounds, accordingly, that is to say, at, &c. in, &c. And the said plaintiffs do aver, that the said ship or vessel, in the said writing or policy of assurance mentioned, at the time of the sailing thereof hereinafter mentioned, and from thence, until and at the time of the loss thereof herein also after mentioned, was a Dutch vessel, to wit, at, &c. x And the said plaintiffs do aver, that the said writing or policy of assurance so by them the said plaintiffs made as aforesaid, was so made in trust for, and for the use, risk, benefit, behalf and account of Mr. Vilmain, and of certain persons who carried on trade and commerce in copartnership in foreign parts under the style and firm of Gaudin and Cuiffard, and of certain other persons carrying on trade and commerce in foreign parts under the style and firm of Scret and Lovel respectively, according to their respective proportions, as hereinafter next mentioned. And the said plaintiffs further say, that afterwards, to wit, on, &c. divers goods and merchandizes of the said Mr. V. of great value, to wit, of the value of two hundred and twenty pounds, of like lawful money, and divers other goods of the said G. and C. of great value, to wit, of the value of one hundred and fifty pounds, of like lawful money, and divers other goods and merchandizes of the said S. and L. of great value, to wit, of the value of one hundred and fifty pounds, of other like lawful money, were put on board the said ship or vessel, being a Dutch vessel as aforesaid, to be carried therein upon the voyage in the said writing or policy of assurance mentioned, to wit, at, &c. = And the said plaintiffs further say, that the said ship, in the said writing or policy of assurance mentioned, to wit, at, &c. departed
and

and set sail from M. aforesaid to, for, and towards N. in the said writing or policy of assurance mentioned, with the said goods and merchandizes on board thereof, but that the said ship did never arrive at N. aforesaid in that voyage; but, on the contrary thereof, the said ship, sailing and proceeding on her said voyage, with the said goods and merchandizes on board thereof as aforesaid, after her departure from M. aforesaid, and before her arrival at N. aforesaid, to wit, on, &c. was, in and upon the high seas, with force and arms, and in a hostile manner, attacked, conquered, taken, and carried away by certain persons to the said plaintiffs unknown; and the said ship, and goods and merchandizes on board thereof as aforesaid, were thereby wholly lost to the proprietors thereof, to wit, at, &c.; of all which premises the said George afterwards, to wit, on, &c. at, &c. had notice; and by reason of the premises the said George then and there became liable to pay, and ought to have paid to the said plaintiffs, a large sum of money, to wit, the sum of one hundred and twelve pounds, so by him insured as aforesaid, according to the form and effect of the said writing or policy of assurance, and his said promise and undertaking so by him made in that behalf as aforesaid, to wit, at, &c. on, &c. And whereas, (&c. &c. like the first, to the mark x, then proceed thus:) And the said plaintiffs further say, ^{2d Count} that afterwards, to wit, on, &c. divers goods and merchandizes of great value, to wit, of the value of five hundred and twenty pounds, of like lawful money, were loaden on board the said ship, to be carried in the said ship on that voyage in the said last mentioned writing or policy of assurance mentioned, and remained on board thereof until the time of the loss thereof hereinafter mentioned; and that the said last-mentioned writing or policy of assurance, so made as last aforesaid, was made for the use, benefit, risk, and account of the owners of such goods and merchandizes last mentioned, to wit, at, &c. (then go on from this mark to the end of the Count. Add the money Counts, and common conclusion.)

G. WOOD.

For that it does not appear in and by the said 1st Count of the said declaration, that the said writing or policy of assurance, in the said 1st Count of the said declaration mentioned, was made in trust for, and for the use, risk, benefit, behalf, and account of Mr. V. and of certain persons who carried on trade and commerce in copartnership in foreign parts under the style and firm of G. and C. and of certain other persons carrying on trade and commerce in foreign parts under the style and firm of S. and L. respectively, according to their respective proportions in the said 1st Count mentioned: and for that it does not appear in or by the said 1st Count of the said declaration, that the said plaintiffs have any right of action whatsoever in that respect, in their own right, against the said George, or that they or either of them have sustained any damage or injury by the said capture and loss therein mentioned: and for that there are divers blanks and void spaces

Causes of demurrer to the last declaration.

vide ante
409. note

in the said 1st Count of the said declaration which render the sense thereof wholly vague, obscure, and uncertain: and for that the said 1st Count is in other respects uncertain, insufficient, and informal, &c. And as to the 2d Count of the declaration, the said George saith, that the said 2d Count, and the matters therein contained, &c. &c. (Causes.) For that it does not appear in or by the said 2d Count of the said declaration, that the said plaintiffs had any interest in the said writing or policy of assurance in the said 2d Count mentioned, or in the goods and merchandizes thereby assured; but it thereby appears, that the said last mentioned writing or policy of assurance was made for the use, benefit, risk, and account of the owners of such goods and merchandizes in the said 2d Count mentioned; and for that the particular names of the said owners of the said last mentioned goods and merchandizes, or any or either of them, are not nor is mentioned, expressed, specified, or declared in or by the said 2d Count of the said declaration: and for that it doth not appear in or by the said 2d Count of the said declaration, that they the said plaintiffs were the owners thereof; and for that it doth not appear in or by the said 2d Count of the said declaration, that they the said plaintiffs have any right of action whatsoever in that respect, in their own right, against the said George, or that they or either of them have sustained any damage or injury by the said capture and loss in the said 2d Count mentioned; and for that there are divers blanks and void spaces in the said 2d Count of the said declaration which render the sense thereof wholly vague, uncertain and obscure: and for that the said 2d Count of the said declaration is in many other respects uncertain, insufficient, and informal. And as to the last Count of the said declaration, the said George saith, that he did not undertake or promise in manner and form as the said plaintiffs have above in that behalf complained against him; and of this he puts himself upon the country, &c.

C. RUNNINGTON.

Declaration on a policy of assurance on a ship and goods which was sunk by the enemies firing at her.

LONDON, tow it, Abraham Le Mesurier complains of John Saunders, being, &c. for that whereas the said plaintiff on the seventeenth day of July A. D. 1773, at London aforesaid, to wit, in the parish of St. Mary le Bow, in the ward of Cheap, according to the usage and custom of merchants, caused or procured to be made a certain writing or policy of assurance, purporting thereby, and containing therein, that the said plaintiff, as well in his own name as for and in the name and names of all and every other person and persons to whom the same did, might, or should appertain, in part or in all, did make assurance, and cause him, them, and every of them, to be insured, lost or not lost, at and from latitude 45 and 53 north, longitude 6 west, to Guernsey or her first port in England, upon any kind of goods, and also upon the body, tackle, apparel, ordnance, munition, artillery, boat, and other furniture, of and in the good ship or vessel called the

La Thetis, (a prize to the Swallow, Captain Efford,) whereof was master under God for that then present voyage A. B. or who-soever else should go for master in the said ship, or by whatsoever name or names the same ship, or the master thereof, was or should be named or called; beginning the adventure upon the said goods and merchandizes from the loading thereof aboard the said ship, latitude 45 and 53 north, longitude 6 west, upon the said ship, &c. and so should continue and endure during her abode there upon the said ship, &c.; and further, until the said ship, with all her ordnance, tackle, apparel, &c. and goods and merchandizes whatsoever, should be arrived as above upon the said ship, &c. until she had moored at anchor twenty-four hours in good safety, and upon the goods and merchandizes until the same should be there discharged and safely landed; and it should be lawful for the said ship, &c. in that voyage to proceed and sail to, and touch and stay at any ports or places whatsoever, without prejudice to that insurance; the said ship, &c. goods and merchandizes, &c. for so much as concerned the assureds by agreement (set out the remaining part of the policy); of which said writing or policy of assurance and memorandum so made as aforesaid, the said defendant afterwards, to wit, on, &c. at, &c. had notice; and thereupon afterwards, to wit, on, &c. in consideration that the said plaintiff, at the special instance and request of the said defendant, had then and there paid to the said defendant the sum of thirty guineas, as a premium or reward for the assurance of one hundred pounds upon the premises in the said writing or policy of assurance mentioned, and had then and there undertaken, and faithfully promised the said defendant to perform and fulfil every thing in the said writing or policy of assurance contained on his part and behalf to be performed and fulfilled, the said defendant undertook, and to the said plaintiff then and there faithfully promised, that he the said defendant would become an assurer to the said plaintiff for the sum of one hundred pounds upon the premises in the said writing or policy of assurance mentioned, and would perform and fulfil every thing in the said writing or policy of assurance contained on his part and behalf to be performed and fulfilled, as such assurer, to the said plaintiff for the said sum of one hundred pounds; and the said defendant then and there became an assurer to the said plaintiff, and subscribed the said writing or policy of assurance as such assurer as to the said one hundred pounds. And the said plaintiff in fact saith, that the said ship, in the said writing or policy of assurance mentioned, before the making of the said writing or policy of assurance, was in safety, to wit, upon the high seas, in latitude 45 and 53 north, longitude 6 west, to wit, at, &c. in, &c.; and that before the making of the said writing or policy of assurance, divers goods and merchandizes of great value, to wit, of the value of ten thousand pounds, were laden and put on board the said ship in the said writing or policy of assurance mentioned; and that the said goods and merchandizes remained and continued on board the said ship from thence, until and at the time of the loss hereinafter

next
11. 11.

next mentioned; and that one D. J. and P. L. were interested in the said premises, in the said writing or policy of assurance mentioned, to a large value, to wit, to the value of all the monies by the said plaintiff ever insured thereon; and that the said insurance so made as aforesaid, was so made for and on their account, and for their own use and benefit, to wit, at, &c. And the said plaintiff further saith, that afterwards, to wit, on, &c. the said ship, with the said goods and merchandizes so laden on board her as aforesaid, proceeded on the said intended voyage, and afterwards, to wit, on, &c. arrived at Cork, in the kingdom of Ireland; whereof the said defendant afterwards, to wit, on, &c. at, &c. had notice: and thereupon afterwards, to wit, on, &c. at, &c. by a certain other memorandum in writing, then and there subjoined to the said policy of assurance, and signed and subscribed by the said defendant, he the said defendant gave his consent for the said ship to proceed from Cork aforesaid to Guernsey or London, and to stop at any port or ports in the Channel for convoy, and did acknowledge himself to be therein assured until her arrival at Guernsey or London, the said ship being warranted with convoy from Cork, as by the said last mentioned memorandum, subjoined to the said writing or policy of assurance, more fully appears. And the said plaintiff further says, that afterwards, to wit, on the twenty-seventh day of October in the year aforesaid, the said ship, with the said goods and merchandizes so laden on board her as aforesaid, departed and set sail with convoy from Cork aforesaid, on her said intended voyage towards Guernsey aforesaid: and the said plaintiff further saith, that afterwards, and whilst the said ship was proceeding on her said voyage, and before her arrival at Guernsey, in the said writing or policy of assurance mentioned, to wit, on the twenty-ninth day of October in the year aforesaid, the said ship, with the said goods and merchandizes so laden on board her as aforesaid, x was upon the high seas, with force and arms, and in a hostile manner, attacked and fired upon by certain men of war, to the said plaintiff unknown, and was thereby so greatly shattered and damaged in her hull, yards, masts, and rigging, that by reason thereof the said ship, with all her tackle, apparel, ordnance, munition, artillery, boat, and furniture, together with the said goods and merchandizes so laden and being on board her as aforesaid, were wholly sunk in the sea and destroyed, and became and were totally lost to the said Daniel and Peter, to wit, at London aforesaid, in the parish and ward aforesaid; of all which said premises, the said defendant, afterwards, to wit, on the twelfth day of November in the year aforesaid, at London aforesaid, in the parish and ward aforesaid, had notice; and was then and there required by the said plaintiff to pay to him the said sum of one hundred pounds, so insured as aforesaid; and which said sum of one hundred pounds the said defendant ought to have paid, according to the form and effect of his said promise and undertaking so made as aforesaid. And whereas, &c. &c. (go on with this Count, same as the first, till you come to this mark x, then proceed as follows):

and sailing and proceeding on her said last mentioned voyage, after her departure from Cork, and before her arrival at Guernsey aforesaid, was by and through the mere dangers of the seas, and the force and violence of the winds and waves, and by means of stormy and tempestuous weather, wrecked, foundered, and sunk in the sea, whereby the said last mentioned ship, with all her tackle, apparel, ordnance, munition, artillery, boat, and furniture, together with the goods and merchandizes so laden and being on board her as aforesaid, became and were totally lost to the said Daniel and Peter; of all which said last mentioned premises, the said defendant afterwards, to wit, on the said tenth day of November in the year aforesaid, at London aforesaid, in the parish and ward aforesaid, had notice; and was then and there requested by the said plaintiff to pay him the said last mentioned sum of one hundred pounds, so insured as last aforesaid; and which said last mentioned sum of one hundred pounds the said defendant ought to have paid to the said plaintiff, according to the form and effect of the said promise and undertaking so made as last aforesaid. (Two other Counts stating the loss of one of them to have been occasioned by the firing of the men of war, and in the other by shipwreck, as in the two preceding Counts, upon a second policy on the same ship, made on the nineteenth of July, at a premium of fifty guineas per cent. Money had and received; and common conclusion to the plaintiffs; damages five hundred pounds.)

LONDON, *ff.* For that whereas the said plaintiffs, before and at the time of the making of the writing or policy of assurance herein after mentioned, was interested in two third parts or shares in a certain ship or vessel called The Sisters, and remained so interested therein until the time of the loss and misfortune hereinafter mentioned, &c.; and the said plaintiff (a) being so interested as aforesaid, afterwards, to wit, on, &c. at, &c. according to the usage and custom of merchants, caused to be made a certain writing or policy of assurance, purporting thereby, and containing therein, that as well, &c. (recite the policy, leaving the blanks open,) and by the same writing or policy of assurance, corn, fish, &c. (set out the memorandum) and under which said writing or policy of assurance was a certain memorandum in writing, purporting and containing therein, that the above mentioned assurance was made upon two thirds of the said ship, and the whole of the said ship was valued at three thousand pounds, as by the said writing or, &c. and memorandum, relation being thereto had, (b) will more fully appear; of which said writing or, &c. and memorandum, that the said defendant afterwards, *ff.* on, &c. at, &c. had notice; and whereupon afterwards, *ff.* on, &c. last mentioned, at, &c. in consideration that the said plaintiff, at the special in-

Declaration on a policy of assurance of two-thirds of a ship.

(a) This is not the common or best form of declaring on a policy. It usually begins stating the policy, without any introduction.

(b) The day defendant subscribed.

stance and request of the said defendant, had then and there paid to the said defendant the sum of nine pounds, of, &c. as a premium for the assurance of two hundred pounds of and upon the premises mentioned in the said writing or, &c. and had undertaken, and then and there faithfully promised the said defendant to perform and fulfil the said writing or, &c. in all things on his part or behalf to be performed and fulfilled as such assured as aforesaid, he the said defendant undertook, and to the said plaintiff then and there faithfully promised, that he the said defendant would become an assurer to the said plaintiff for the said sum of two hundred pounds of and upon the premises mentioned in the said writing or, &c. and that he the said defendant would perform and fulfil the same, as such assured, for the said sum of two hundred pounds, and then and there subscribed his name to the said writing or &c. as such assurer as to the said sum of two hundred pounds: and the said plaintiff further saith, that the said ship, at the time of the making of the said writing or, &c. was in good safety, *ff.* at the island of St. Lucia in the West Indies, that is to say, at London aforesaid, in the parish and ward aforesaid, and that afterwards, and before the first of May (c) in the year of Our Lord 1784, to wit, on, &c. at, &c. the said ship or vessel was upon the high seas very much eaten, damaged, and destroyed by worms, and thereby, and by and through the force of certain hurricanes of wind and stormy tempestuous weather, and by and through the perils and dangers of the seas, was rendered of no use and value to the said plaintiff, and was thereby wholly lost to him; of all which premises the said defendant afterwards, to wit, on, &c. there had notice, and was by the said plaintiff then and there requested to pay him the said sum of two hundred pounds, so by the said defendant assured as aforesaid, and which said sum of two hundred pounds the said defendant then and there ought to have paid to the said plaintiff, according to the tenor and effect of the said writing or, &c. and of his said promise and undertaking so made by him in that behalf as aforesaid. (Count for money had and received; and common conclusion.) W. LAMB.

(c) Note, the insurance was for half a year, from the first of November to the first of May.

Declaration on a policy of insurance of goods on board ship.

LONDON, *ff.* James Blackhurst complains of W. Cockell, esquire, being in the custody of the marshal of the marshalsea of our Lord the now king, before the king himself, in a plea of trespass on the case; for that whereas the said plaintiff, for his own use and benefit, heretofore, to wit, on the ninth day of December in the year of Our Lord 1784, at London, in the parish of St. Mary le Bow, in the ward of Cheap, according to the custom of merchants in that respect used, caused to be effected and made a certain writing or policy of assurance, purporting thereby, and containing therein, that Mr. Richard Panton, as well in his own name as for and in, &c. (recite the policy verbatim, with the blanks)

blanks; for being the identical contract, it must be declared on as it is); to which said writing or policy of assurance a certain memorandum was then and there subscribed, whereby corn, &c. (set out the memorandum); and to which said writing or policy of assurance was then and there underwrote a certain other memorandum in the words following (*d*), on goods as above warranted well this ninth of December 1784; which said writing or policy of insurance, and memorandum so made thereon as aforesaid, the said defendant afterwards, to wit, on the day and year aforesaid, at, &c. on, &c. aforesaid, had notice; and thereupon afterwards, to wit, on, &c. at, &c. aforesaid, in consideration that the said plaintiff, at the special instance and request of the said defendant, had then and there paid to the said defendant a large sum of money, to wit, the sum of twelve shillings and sixpence of lawful money of Great Britain, as a premium or reward for the assurance of a large sum of money, to wit, the sum of fifty pounds of like lawful money, upon the said goods, wares, and merchandizes in the said writing or policy of assurance mentioned, and had then and there undertaken and faithfully promised the said defendant, to perform and fulfil all things in the said writing or policy of assurance mentioned on the part and behalf of the said assured to be performed and fulfilled, he the said defendant undertook, and then and there faithfully promised the said plaintiff that he the said defendant would become an insurer to the said James of and upon the said goods and merchandizes in the said writing or policy of assurance mentioned, and that he would perform and fulfil all things in the said writing or policy of assurance contained on his part and behalf to be performed and fulfilled, as such assurer, to the said plaintiff for the said sum of fifty pounds, according to the form and effect of the said writing or policy of assurance; and that the said defendant then and there became an assurer to the said plaintiff, and (*e*) by one H. A. the agent of the said defendant in that behalf subscribed the said writing or policy of assurance, as such assurer, to the said sum of fifty pounds accordingly, to wit, at, &c. in, &c. And the said plaintiff in fact says, that the said ship or vessel, in the said writing or policy of assurance mentioned, before and on the said ninth day of December in the said year 1784, was in good safety, and was bound on the said voyage in the said writing or policy of assurance specified, and then, and at the time of the loss thereof hereinafter mentioned, was a British vessel; and that before and at the time of the loss thereof hereafter mentioned, divers goods, wares, and merchandizes had been, and were laden and put, and were in and on board the said ship or vessel, to be carried therein upon the said voyage in the said writing or policy of assurance aforesaid mentioned; that the said goods and merchandizes so in and on board the said ship

(*d*) The ship was warranted safe, and was safe the day she was lost. She struck at six, and went down at eight, A. M.

(*e*) The subscription was H. A. for William Cockell.

or vessel as aforesaid, were well as aforesaid, on the ninth of December 1784; and the said plaintiff, at the time of the lading and putting of the said goods in and on board the said ship or vessel, and from thence and at the time of the loss hereafter mentioned, was interested in the said goods and merchandizes to a large amount, to wit, to the amount of all the money ever insured by him; and the said plaintiff thereupon, to wit, at, &c. in, &c. And the said plaintiff in fact further says, that although the said ship or vessel, in the said writing or policy of assurance mentioned, departed and set sail on the said voyage in the said writing or policy of assurance mentioned, with the said goods and merchandizes in and on board her as aforesaid, yet the said ship or vessel did not arrive at Liverpool aforesaid in that voyage; but on the contrary thereof afterwards, and whilst she was proceeding on her said voyage, with the said goods, wares, and merchandizes in and on board her as aforesaid, and before her arrival at Liverpool aforesaid, to wit, *(f) on the said ninth day of December in the said year 1784*, the said ship or vessel, with the said goods and merchandizes in and on board her as aforesaid, was by and through the mere danger of the seas, and the force and violence of the winds and waves, and by the means of stormy and tempestuous weather, wrecked, foundered, and sunk in the seas, whereby the said goods and merchandizes, so laden and put on board the said ship or vessel as aforesaid, became and were totally lost, to wit, at, &c. in, &c.; of all which said premises, the said defendant afterwards, to wit, on the first day of January in the year of Our Lord 1785, at, &c. in, &c. had notice; whereby, and by means of which said several premises, the said defendant then and there became liable to pay, and ought to have paid, to the said plaintiff, a large sum of money, to wit, the sum of fifty pounds, so by him insured as aforesaid, according to the tenor and effect of the said writing or policy of assurance, and his said promise and undertaking in that behalf made as aforesaid, to wit, at, &c. in, &c. (Count for money had and received; account stated; and common conclusion.)

THO. BARROW.

(f) The day she was warranted safe.

The defendant pleaded the general issue to this declaration, and the cause came on to be tried before Lord Kenyon at Guildhall, sittings after Easter Term

29. Geo. 3. when he nonsuited the plaintiff; but on motion for a new trial Trinity Term following, the nonsuit was set aside, and a new trial granted. See the case reported 3. T. R. 360.

Declaration in C. B. in assumpsit on a policy of assurance, (*Assured v. Assurer*), of a Greenland-man.

LONDON, to wit. Henry William Guion, late of London, merchant, was attached to answer to John Cope and Laurence Chenleson in a plea of trespass on the case, &c. and thereupon the said J. and L. by S. W. their attorney, complain, That whereas the said J. and L. heretofore, to wit, on the eleventh day of February in the year of Our Lord 1784, at London, in the parish of St. Mary le Bow, in the ward of Cheap, according to the custom

custom of merchants in that respect used, effected and made a certain writing or policy of assurance, purporting thereby, and containing therein, that, &c. &c. (recite the policy in the very words of it) as by the said writing or policy of assurance more fully appears; which said writing or policy of assurance being so made as aforesaid, afterwards, to wit, on the day and year aforesaid, at L. aforesaid, in the parish and ward aforesaid, in consideration that the said J. and L. at the special instance and request of the said H. W. had then and there paid to the said H. W. a large sum of money, to wit, the sum of twelve pounds twelve shillings of lawful money of Great Britain, as a premium or reward for the assurance of a large sum of money, to wit, the sum of two hundred pounds of like lawful money, upon the said ship or vessel in the said writing or policy of assurance mentioned, valued at two thousand four hundred pounds, and had also then and there undertaken and faithfully promised the said H. W. to perform and fulfil all things in the said writing or policy of assurance contained, on the part and behalf of the assured to be performed and fulfilled, he the said H. W. undertook, and then and there faithfully promised the said J. and L. that he the said H. W. would become an assurer to the said J. and L. of and upon the said ship or vessel, in the said writing or policy of assurance mentioned, valued as aforesaid, and that he would perform and fulfil all things in the said writing or policy of assurance contained, on his part and behalf to be performed and fulfilled as such assurer, to the said J. and L. for the said sum of two hundred pounds, according to the form and effect of the said writing or policy of assurance; and the said H. W. then and there became an assurer to the said J. and L. and subscribed the said writing or policy of assurance, as such assurer, for the said sum of two hundred pounds accordingly, to wit, at L. aforesaid, in the parish and ward aforesaid: and the said J. and L. in fact say, that the said ship or vessel, in the said writing or policy of assurance mentioned, before and at the time of the making of the said writing or policy of assurance mentioned, was in good safety, to wit, at the port of London, and was bound from thence on the said voyage in the said writing in the said policy of assurance specified; and that they the said J. and L. at the time of making the said writing or policy of assurance, and also at the time of the misfortune hereafter mentioned, were interested in the said ship or vessel, in the said writing or policy of assurance mentioned, to a large amount, to wit, to the amount of all the money by them insured thereon, to wit, at L. aforesaid, in the parish and ward aforesaid; and the said J. and L. further say, that the said ship or vessel, in the said writing or policy of assurance mentioned aforesaid, to wit, on the twenty-fourth day of February in the year aforesaid, departed and set sail from the said port of London on her said intended voyage in the said writing or policy of assurance mentioned, with certain goods and merchandizes in and on board her; but that after her departure, and before the completion of her said voyage, and in the course thereof, to wit, on the fourth day of

1st Count upon
assurance of
200l. upon the
ship in plain
own right, with
two other
Counts.

March in the year aforesaid, the said ship or vessel was, by and through the force and violence of the winds and waves, and by the perils and dangers of the seas, forced, driven, and cast upon and against certain shoals, sands, and sand-banks, and thereby became and was strained, bulged, disjoined, broke, and otherwise damaged in her body, rudder, irons, and other parts, inasmuch that by means thereof, the said ship or vessel was totally disabled from proceeding on her said voyage without being repaired as to the said damage so by her sustained as aforesaid; and in consequence thereof, and for the purpose of such repair, and the safeguard, preservation, and safety of the said ship or vessel, was forced and obliged to be piloted, and attended by a pilot and a certain ship or vessel, during her distress, and to be conducted, conveyed, and carried into port, and there unloaded, reloaded, and repaired; and on that occasion, by reason and means of the several premises aforesaid, the said J. and L. by themselves and their servants and agents, did labour for and in and about the safeguard, safety, and preservation of the said ship or vessel; and in so doing, and in and about the repair of the same ship or vessel as to the said damage so by her sustained as aforesaid, and the other premises aforesaid, did necessarily lay out and expend a large sum of money, to wit, the sum of three hundred pounds of lawful money of Great Britain, to wit, at L. aforesaid, in the parish and ward aforesaid; whereby the said H. W. by force, and according to the tenor and effect of the said writing or policy of assurance, and his said promise and undertaking thereupon, became liable to pay to the said J. and L. a large sum of money, to wit, the sum of one hundred pounds of like

(1) 2. Burr.
1167, 1172.

2d Count on an
insurance for
them in their
own right, and
as trustees for
others.

lawful money, being the (1) *rateable part or proportion* of the expence or charges aforesaid, which the said H. W. ought to have paid and (1) *contributed* in respect of the insurance aforesaid; whereof the said H. W. afterwards, to wit, on the day and year last aforesaid, at L. aforesaid, in the parish and ward aforesaid, had notice. [“ 2d Count same as first, only averring insurance to have been made by plaintiffs on behalf of themselves and other owners, and stating the interests accordingly, viz. as follows:]
“ *And the said plaintiffs in fact say, that the said ship or vessel, in the said last mentioned writing or policy of assurance mentioned, before and at the time of making the said last mentioned writing or policy of assurance, was in good safety, to wit, at the port of London, and was bound from thence on the said voyage in the said last mentioned writing or policy of assurance specified; and that at the time of the making of the said last mentioned writing or policy of assurance hereafter mentioned, the said J. and L. and certain other persons, (to wit,) &c. were interested in the said ship or vessel, in the same writing or policy of assurance mentioned, to a large amount, to wit, to the amount of all the money by or for them insured thereon; and that the said writing or policy of assurance, so effected and made by them the said J. and L. as aforesaid, was effected and made by them the said J. and L. in trust for, and to and for the use and*
“ *benefit*

“ benefit of them the said J. and L. and the said several other persons so interested with them in the said last mentioned ship or vessel as aforesaid, that is to say, according to their several and respective shares, interests, and proportions therein and thereof, to wit, at L. aforesaid, in the parish and ward aforesaid.”

And the said J. and L. heretofore, to wit, on the eleventh day of February in the year aforesaid, at London aforesaid, in the parish and ward aforesaid, according to the custom of merchants in that respect, effected and caused, and procured to be effected, a certain other writing or policy of assurance, purporting thereby and containing therein to the effect following, to wit, &c. &c. (recite the policy in the very words,) as by the said last mentioned writing or policy of assurance more fully appears; of which said last mentioned writing or policy of assurance the said H. W. afterwards, to wit, on the day and year aforesaid, at L. aforesaid, in the parish and ward aforesaid, had notice; and thereupon afterwards, to wit, on the day and year last aforesaid, at London aforesaid, in the parish and ward aforesaid, in consideration that the said J. and L. at the special instance and request of the said H. W. had then and there paid to the said H. W. a large sum of money, to wit, the sum of twelve pounds twelve shillings of like lawful money of Great Britain, as a premium and reward for the assurance of a large sum of money, to wit, the further sum of two hundred pounds of like lawful money, *the bounty* to arise and become payable upon and in respect of the said last mentioned ship or vessel in and from the said voyage in the said last mentioned writing or policy of assurance mentioned, by virtue of the statute in such case made and provided, and had then and there undertaken and faithfully promised the said H. W. to perform and fulfil all things in the said last mentioned writing or policy of assurance contained, on the part and behalf of the assured to be performed and fulfilled, he the said H. W. undertook, and then and there faithfully promised the said J. and L. that he the said H. W. would become an assurer to the said J. and L. of and upon *such bounty* as aforesaid, that he would perform and fulfil all things in the said writing or policy of assurance contained, on his part and behalf to be performed and fulfilled as such assurer to the said J. and L. for the said sum of two hundred pounds, according to the form and effect of the said last mentioned writing or policy of assurance; and the said H. W. then and there became an assurer to the said J. and L. and subscribed the said last mentioned policy of assurance as such assurer for the said last mentioned sum of two hundred pounds accordingly, at L. aforesaid, in the parish and ward aforesaid: and the said J. and L. in fact say, that the said ship or vessel, in the said last mentioned writing or policy of assurance mentioned, before and at the time of the making of the said last mentioned writing or policy of assurance, was in good safety, to wit, in the port of London aforesaid, and was a British ship bound on the said voyage in the said last mentioned writing or policy of assurance specified, that is to say, to Greenland, Davis's Streights, and the

3d Count for
aool. insured for
plaintiffs in their
own right upon
the *bounty* pay-
able by govern-
ment.

jacent seas, to be employed by British subjects in the whale fishery there; and that the said J. and L. at the time of the making the said last mentioned writing or policy of assurance, and also at the time of the misfortune hereafter mentioned, were interested in such bounty to a large amount, to wit, the amount of all the money by them insured thereon, to wit, at L. aforesaid, in the parish and ward aforesaid: and the said J. and L. further say, that the said ship or vessel, in the said last mentioned writing or policy of assurance mentioned, afterwards, to wit, on the twenty-fourth day of February in the year aforesaid, departed and set sail from the said port of London on the said intended voyage in the said writing or policy of assurance mentioned, manned and navigated as by law directed (with certain goods, wares, and merchandizes in and on board her); but that after her said departure, and before the completion of her said voyage, and in the course thereof, to wit, on the said fourth day of March in the year aforesaid, the said last mentioned ship or vessel was, by and through the force and violence of the winds and waves, and by the perils and dangers of the seas, forced, driven, and cast upon and against certain shoals, sands, and sand-banks, and thereby became and was strained, bulged, disjointed, broke, and otherwise damaged in her body, rudder, rudder-irons, and other parts, inasmuch that by reason thereof the said last mentioned ship or vessel was totally disabled from proceeding on her said voyage without being repaired as to the said damage so by her sustained as aforesaid; and in consequence thereof, and for the purpose of such repair, and the safeguard, preservation, and safety of the said last mentioned ship or vessel, was forced and obliged to be piloted, and attended by a pilot and a certain other ship or vessel, during her distress, and to be conducted, conveyed, and carried into port, and there unloaded, repaired, and reloaded; and on that occasion, and by reason and means of the several premises aforesaid, the said J. and L. by themselves and their servants and agents, in labour for in and about the safeguard and preservation of the said last mentioned ship or vessel as to the said damage so by her sustained as aforesaid, and other the premises aforesaid, did necessarily lay out and expend a large sum of money, to wit, the sum of three hundred pounds of like lawful money, to wit, at L. aforesaid, in the parish and ward aforesaid; whereby the said H. W. by force, and according to the tenor and effect of the said last mentioned writing or policy of assurance, and his aforesaid promise and undertaking thereupon, became liable to pay to the said J. and L. a large sum of money, to wit, the further sum of one hundred pounds of like lawful money, being the *rateable part* and proportion of the expences and charges last aforesaid, which the said H. W. ought to have paid and contributed in respect of the insurance last aforesaid; whereof the said H. W. afterwards, to wit, on the day and year last aforesaid, at London aforesaid, in the parish and ward aforesaid, had notice.

V. LAWES.

Conclusion

Conclusion to each Count states, that the ship was cast upon a sand-bank, and bulged and strained so much, on her outward-bound voyage, as to make it necessary to pilot her into harbour, and

attend her by another vessel, whereby plaintiffs were put to labour and expence, for which defendant became liable to pay.

LONDON, *J.* Henry William Guyon, late of, &c. was attached to answer John Cooper and Laurence Charleſon, &c. that whereas the said plaintiffs heretofore, to wit, on, &c. at, &c. according to the custom of merchants in that respect used, effected and made, and caused and procured to be effected and made, a certain writing or policy of assurance, purporting thereby and containing therein, that, &c. &c. (recite the policy,) as by the said writing or policy of assurance more fully appears; of which said writing or policy of assurance so made as aforesaid, they the said plaintiffs afterwards, to wit, on, &c. had notice; and thereupon afterwards, to wit, on, &c. at, &c. in consideration that the said plaintiffs, at the special instance and request of the said defendant, had then and there paid to the said defendant a large sum of money, to wit, the sum of twelve pounds twelve shillings of lawful money of Great Britain, as a premium or reward for the assurance of a large sum of money, to wit, the sum of two hundred pounds of like lawful money, upon the said ship or vessel in the said writing or policy of assurance mentioned, valued at two thousand four hundred pounds, and had then and there undertaken and faithfully promised the said defendant to perform and fulfil all things in the said writing or policy of assurance contained, on the part and behalf of the assured to be performed and fulfilled, he the said defendant undertook, and then and there faithfully promised the said plaintiffs, that he the said defendant would become an assurer to the said plaintiffs of and upon the said ship or vessel in the said writing or policy of assurance mentioned, valued at, &c. aforesaid, and that he would perform and fulfil all things in the said writing or policy of assurance contained, on his part and behalf to be performed and fulfilled, as such assurer to the said plaintiffs for the said sum of two hundred pounds, according to the form and effect of the said writing or policy of assurance: and the said defendant then and there became an assurer to the said plaintiffs, and subscribed the said writing or policy of assurance, as such assurer, for the said sum of two hundred pounds accordingly, to wit, at, &c. in, &c.: and the said plaintiffs in fact say, that the said ship or vessel, in the said writing or policy of assurance mentioned, and before and at the time of the making of the said writing or policy of assurance, was in good safety, to wit, in the port of London, and was bound from thence on said voyage in the said writing or policy of assurance specified; and that they the said plaintiffs, at the time of the making of the said writing or policy of assurance, and also at the time of the misfortune hereafter mentioned, were interested in the said ship or vessel, in the said writing or policy of assurance mentioned, to a large amount, to

Declaration on different policies of insurance, states the policies that the plaintiffs were interested in the ship to the amount of the money insured, that the ship was stranded and disabled from proceeding in her voyage without being unloaded and repaired, and for safety was piloted, whereby defendant became liable to pay 16*l.* being his proportion of his charges.

wit, to the amount of all the money by them insured thereon, to wit, at, &c. : and the said plaintiffs further say, that the said ship or vessel, in the said writing or policy of assurance mentioned, afterwards, to wit, on, &c, departed and set sail from the said port of London on the said intended voyage, in the said writing or policy of assurance mentioned, with certain goods and merchandizes in and on board her; but that after her departure, and before the completion of the said voyage, and in the course thereof, to wit, on, &c. the said ship or vessel was, by and through the force and violence of the winds and waves, and by the perils and dangers of the seas, forced, driven, and cast upon and against certain shoals and sands, and sand-banks, and thereby became and was strained, bulged, and disjointed, broke, and otherwise damaged in her body, rudder, rudder-irons, and other parts, inasmuch that by means thereof the said ship or vessel was totally disabled from proceeding on her said voyage without being repaired as to the said damage so by her sustained as aforesaid; and in consequence thereof, and for the purpose of such repair, and the safeguard, preservation, and safety of the said ship or vessel, was forced and obliged to be piloted, and attended by a pilot and a certain ship or vessel, during her distress, and to be conducted, conveyed, and carried into port, and there unloaded, reloaded, and repaired; and on that occasion, and by reason and by means of the several promises aforesaid, the said plaintiffs (a), by themselves and their servants and agents, did labour for in and about the safeguard, safety, and preservation of the said ship or vessel; and in so doing, and in and about the repair of the same ship or vessel as to the said damage so by her sustained as aforesaid, and of the premises aforesaid, did necessarily lay out and expend a large sum of money, to wit, the sum of three hundred pounds of lawful money of Great Britain, to wit, at, &c. in, &c. whereby the said defendant, by force, and according to the tenor and effect of the said writing or policy of assurance, and his aforesaid promises and undertakings thereupon, became liable to pay to the said plaintiffs (b) a large sum of money, to wit, the sum of one hundred pounds of like lawful money of, &c. being the rateable part or proportion of the expence or charges aforesaid, which the said defendant ought to have paid and contributed in respect of the assurance aforesaid; whereof he the said defendant afterwards, to wit, on, &c. had notice. (2d Count like the first, except as to the amount of the interest, which in this Count runs thus:) And at the time of the making of the said writing or policy of assurance, and also at the time of the misfortune hereafter mentioned, the said plaintiffs and certain other persons, to wit, A. B. C. D. &c. &c. were interested

2d Count.

(a) In the 2d Count add, "and the
" said several other persons interested
" with them in the said last mentioned
" ship or vessel as aforesaid."

(b) In the 2d Count add, "for the
" use and benefit of themselves, and of
" the said several other persons so inter-
" rested with them in the said last men-
" tioned ship or vessel as aforesaid."

in the said ship or vessel, in the same writing or policy of assurance mentioned, to a large amount, to wit, to the amount of all the money by them insured thereon; and that the said last mentioned writing or policy of assurance being so effected and made by them the said plaintiffs as aforesaid, was effected and made by them the said plaintiffs in trust for, and for the use and benefit of them the said plaintiffs, and the said several other persons so interested therein or with them in the said last mentioned ship or vessel as aforesaid, that is to say, according to their several and respective shares, interest, and property therein, &c. and thereof, &c. to wit, at, &c. in, &c. (Aver the loss, and go on as before. 3d Count, after stating the policy of assurance and notice of it had by the defendant, as in the former Counts.) Thereupon, afterwards, to wit, on, &c. at, &c. in consideration that the said plaintiffs, at the special instance and request of the said defendant, had then and there paid to the said defendant a large sum of money, to wit, the further sum of twelve pounds twelve shillings of like lawful money of Great Britain, as a premium and reward for the assurance of a large sum of money, to wit, the full sum of two hundred pounds of like lawful money, the bounty to arise and become payable upon and in respect of the said last-mentioned ship or vessel on and from the said voyage in the said last-mentioned writing or policy of assurance mentioned, by virtue of the statute in that case made and provided, and had then and there undertaken and faithfully promised the said defendant to perform and fulfil all things therein contained, on the part and behalf of the assured to be performed and fulfilled, he the said defendant then and there undertook and faithfully promised the said plaintiffs, that he the said defendant would become an assurer to the said plaintiffs of and upon such bounty as aforesaid, and that he would perform and fulfil all things in the said last-mentioned writing or policy of assurance contained, on his part and behalf to be performed and fulfilled, as such assurer to the said plaintiff for the said last mentioned sum of two hundred pounds, according to the form and effect of the said last mentioned writing or policy of assurance; and the said defendant then and there became an assurer to the said plaintiffs, and subscribed the said last mentioned writing or policy of assurance, as such assurer, for the said last mentioned sum of two hundred pounds accordingly, at London aforesaid: and the said plaintiffs in fact say, that the said ship or vessel, in the said last mentioned writing or policy of assurance mentioned, before and at the making of the said last mentioned writing or policy of assurance, was in good safety in the port of London, and was a British ship bound on the said voyage in the said last mentioned writing or policy of assurance specified, that is to say, to Greenland and the adjacent seas, to be employed by British subjects in the whale-fishing line; and that the said plaintiffs, at the time of the making of the said last mentioned writing or policy of assurance, and also at the time of the misfortune hereafter mentioned, were interested in such bounty as aforesaid to a large amount,

to wit, the amount of all the money insured thereon, to wit, at, &c. : and the said plaintiffs further say, that the said ship or vessel, in the said last mentioned writing or policy of assurance mentioned, afterwards, to wit, on, &c. departed and set sail from the said port of London on the said intended voyage in the said writing or policy of assurance mentioned, and navigated, with certain goods and merchandizes in and on board her ; but that after her said departure, and before the completion of the said voyage, and in the course thereof, &c. &c. (as in the 1st Count) The 4th Count like the 3d for the *bounty*, but with alterations similar to the 1st and 2d, as to the persons interested in the insurance : 5th, which states another policy of a different date upon the same ship, in which the name of the person making the insurance is left blank, valued at one thousand five hundred pounds on part of the ship, exclusive of boats and fishing tackle ; that in consideration of a premium of six pounds six shillings for the assurance of one hundred pounds upon the same part of the said ship or vessel, the defendant became an assurer upon the said freight of the said ship or vessel in the said last mentioned writing or policy of assurance mentioned, valued as aforesaid, and exclusive as aforesaid, and underwrote the said policy that the ship was then in safety ; " and that at the time of the making of the said last mentioned writing or policy of assurance, and also at the time of the misfortune hereafter next mentioned, the said J. P. was interested in the said part of the said ship or vessel in the said last mentioned writing or policy of assurance mentioned, exclusive as aforesaid, to a large amount, to wit, to the amount of all the money by or for him insured thereon ; and that the said last mentioned writing or policy of assurance, so effected and made by them the said plaintiffs as aforesaid, was made and effected by them the said plaintiffs in trust for, and to and for the use and benefit of the said J. P. as aforesaid : (the remainder of the Count is like the foregoing, except that this states) that by means of the several premises aforesaid, the said J. B. for whose use and benefit the said last mentioned writing or policy of assurance was effected and made, by his servants and agents did labour for, &c. &c. whereby the said defendant became liable to pay to the said plaintiffs, for the use and benefit of the said J. P. for whose use and benefit the said last mentioned policy of assurance was effected and made as aforesaid, a large sum of money for his rateable proportion. The 6th Count like the 5th, but averring the interest in all the owners, like the 2d. (Counts for work and labour by plaintiffs, their servants and agents ; money laid out, &c. &c.)

On a promise to
settle a loss in-
dorsed on a po-
licy.

LANCASHIRE, *vs.* Henry Travis complains of George Warren Watts, being, &c. for that whereas the said Henry, before the promise and undertaking hereinafter next mentioned, on the thirteenth day of March 1773, at Manchester in the said county of Lancaster, according to the usage and custom of merchants, caused

caused and procured to be made a certain writing or policy of insurance, purporting thereby, and containing therein, *that certain persons, by the name and description of Messrs. Samuel Sandys and Co. for and on behalf of the said Henry, by the name of C. Jarvis, as well in their own name as for and in the name and names of all and every other person or persons (set out the policy), and in case of loss (which God forbid), the assurers not to make up any average loss under five pounds per cent. unless general, as appears; under which said writing or policy of assurance a certain memorandum was then and there written, whereby corn, salt, fish, fruit, flour, and seeds were warranted free from average, unless general, or the ship should be stranded; and it was particularly agreed by the said writing or policy of insurance, that any insufficiency of the ship not known to the assured should not prejudice that insurance; of which said writing or policy of assurance, and memorandum and agreement so made as aforesaid, the said George Warren afterwards, to wit, on the same day and year aforesaid, at, &c. aforesaid, had notice; and thereupon afterwards, to wit, on the same day, &c. at, &c. aforesaid, in consideration that the said Henry Jarvis, at the special instance and request of the said George Warren, had then and there paid, or caused to be paid, to the said George Warren the sum of nine guineas, as a premium and reward for the insurance of one hundred and fifty pounds of and upon the premises aforesaid, in the said writing or policy of assurance mentioned, and had undertaken and faithfully promised the said George Warren to perform and fulfil all things in the said writing or policy of insurance contained, on the part and behalf of him the said Henry Jarvis as the assured to be performed and fulfilled, he the said George Warren undertook, and to the said Henry Jarvis then and there faithfully promised, that he the said George Warren would become an assurer to the said Henry Jarvis for the said sum of one hundred and fifty pounds of and upon the premises aforesaid, in the said writing or policy of insurance mentioned, and would perform and fulfil all things in the said writing or policy of insurance contained on his part and behalf to be performed and fulfilled, as such assurer, as to the said one hundred and fifty pounds; and the said George Warren then and there became an assurer to the said Henry Jarvis, and subscribed the said writing or policy of insurance as such assurer as to the said one hundred and fifty pounds: and the said Henry Jarvis in fact says, that the said ship, in the said writing or policy of insurance mentioned, before the making of the said writing or policy of insurance, was in safety, to wit, at Liverpool aforesaid, in the said county aforesaid, in the said writing or policy of insurance mentioned; and that before the making of the said writing or policy, &c. divers goods and merchandizes were laden and put on board the said ship, to be carried in the said ship from Liverpool aforesaid to the coast of Africa aforesaid, in the said writing, &c. mentioned; and that the said goods and merchandizes remained and continued on board the said ship from thence until the time*

of

of the loss hereinafter mentioned; and that the said Henry Jarvis, until the time of the loss hereinafter next mentioned, was interested in the said premises in the said writing, &c. mentioned, upon commissions, privileges, and wages, to a large value, that is to say, to the value of all the monies by him ever insured thereon; and that the said insurance, so made as aforesaid, was so made for and on his own account, and for his own use and benefit, to wit, at Manchester aforesaid, in the county aforesaid: and the said Henry Jarvis further says, that afterwards, to wit, on the same day and year aforesaid, the said ship, with the said goods and merchandizes on board, departed and set sail from Liverpool aforesaid, on her said intended voyage, for and towards the coast of Africa aforesaid: and the said Henry Jarvis further says, that afterwards, during the said voyage, and as the said ship or vessel, with the said goods and merchandizes on board thereof as aforesaid, was proceeding and sailing on the high seas on her said voyage from L. aforesaid towards the coast of Africa as aforesaid, to wit, on the tenth day of May in the year aforesaid, the said ship was, by and through the mere dangers of the seas, and the force and violence of the winds and waves, and by means of stormy and tempestuous weather, totally sunk and lost with the goods and merchandizes on board her; and the said H. Jarvis thereby wholly lost and was deprived of his commissions, privileges, and wages in, for, and on account of the said ship, and the said goods and merchandizes on board her as aforesaid, and of the profits thereof; of all which said premises the said George Warren afterwards, to wit, on the same day and year last aforesaid, at Manchester aforesaid in the county aforesaid, had notice, and was then and there requested by the said Henry to pay him the said sum of one hundred and fifty pounds so by him insured as aforesaid; and which one hundred and fifty pounds he the said George Warren ought to have paid, according to the form and effect of the said policy and his said promise in that behalf made as aforesaid.

ad Count That ship was lost not through any insufficiency known to the assured; and promise to pay loss on commissions, &c. within one month.

And whereas also the said Henry Jarvis, &c. (as in the *last Count, saying, a certain other policy and last mentioned writing*), to wit, on the said tenth day of May in the year aforesaid, the said last mentioned ship was, by and through the mere dangers of the seas, and the force and violence of the winds and waves, and by means of stormy and tempestuous weather, and not through any insufficiency of the ship known to the said H. J. at the time of making the said last mentioned insurance, totally sunk and lost, with the said last mentioned goods and merchandizes on board her, and the said H. J. thereby wholly lost and was deprived of his commissions, privileges, and wages in, for, and on account of the said last mentioned ship, and of the goods and merchandizes so aboard her as last aforesaid, and of the profits thereof; of all which said last mentioned premises the said George Warren afterwards, to wit, on the *twelfth day of March 1774*, at Manchester aforesaid in the said county, also had notice; and he the said George Warren thereupon, in consideration of the premises last aforesaid, afterwards, to

wit, on the same day and year last aforesaid, at, &c. aforesaid, undertook, and to the said H. J. then and there faithfully promised to pay him the sum of fifty-three pounds twelve shillings and three pence per cent. loss on commissions, privileges, and wages, for and on account of the premises last aforesaid, in one month from that time: and the said H. J. in fact says, that the sum of fifty-three pounds twelve shillings and three pence per cent. on the said one hundred and fifty pounds so insured as last aforesaid, amounts in the whole to a large sum of money, to wit, to the sum of eighty pounds eight shillings and four pence halfpenny; whereof the said G. W. afterwards, to wit, on the same day and year last aforesaid, at Manchester aforesaid in the county aforesaid, had notice. And whereas also, &c. (another Count, two hundred pounds, money had and received; two hundred pounds money paid, laid out, and expended: common conclusion; damages three hundred pounds.

F. BULLER.

LONDON, to wit. Plaintiff complains against defendant, being, &c. for that whereas, on the twenty-first day of December 1771, at London aforesaid, &c. he the said plaintiff made a certain writing, commonly called a policy of insurance, according to the usage and custom of merchants, purporting thereby, and containing therein, that, &c.; and by the said writing or policy of insurance, corn, fish, salt, fruit, flour, and seed, were warranted free from average, unless general, or the ship were stranded; sugar, tobacco, hemp, flax, hides, and skins, were warranted free from average under five pounds per cent. and all other goods free from average under three pounds per cent. unless general, or the ship were stranded; and it was particularly agreed, that any insufficiency of the ship, not known to the assured, should not prejudice that insurance, as by the said writing, &c. relation being thereunto had, may more fully appear. And whereas afterwards, to wit, on the same day and year aforesaid, at, &c. aforesaid, in consideration of one pound nineteen shillings and seven pence of lawful money, &c. to him the said defendant then and there paid by the said plaintiff, at the special instance and request of the said defendant, for the assurance of one hundred and thirty-two pounds upon the following goods, that is to say, twenty-five serons barilla of No. 1. to 25, on board the said ship or vessel for and upon the said voyage in the said policy mentioned, according to the tenor and effect, and the true intent and meaning of the said writing or, &c. he the said defendant became an assurer for the said sum of one hundred and thirty-two pounds upon the said twenty-five serons barilla for and upon the said voyage, according to the true intent and meaning of the said writing or, &c. as such assurer; and to the said plaintiff then and there faithfully promised, that he the said defendant would well and truly perform all and singular the said premises in the said writing or, &c. contained on the part and behalf of the assurers to be performed and fulfilled,

Against an underwriter of a policy on goods to the amount of 132l. from Alicant to Havre to Grace, where the ship was not lost, but the goods damaged by the ship having sprung a leak.

fulfilled as to the said twenty-five serons barilla, according to the tenor and true intent and meaning of the said writing or, &c. so far as the said one hundred and thirty-two pounds by him the said defendant assured and subscribed as aforesaid: and the said plaintiff in fact says, that the said ship, at the time of the making of the said writing or, &c. was in safety at Alicant aforesaid, that is to say, at L. aforesaid, in the parish and ward aforesaid, and that the said twenty-five serons barilla were the proper goods of the said plaintiff, and were of great value, to wit, of the value of three hundred pounds of lawful, &c.: and that the said ship, with the said twenty-five serons barilla on board thereof, afterwards, to wit, on the said twenty-first day of December in the said 1771, set sail and departed from Alicant aforesaid on her said voyage; and that, as the said ship was sailing and proceeding on her said voyage with the said goods on board thereof, the said goods, before the arrival of the said ship or goods at Havre de Grace aforesaid, to wit, on the first day of January A. D. 1772, by storms and tempests, and the violence and perils of the seas, were wholly lost, that is to say, at London aforesaid, at the parish and ward aforesaid; of all which said premises the said defendant afterwards, to wit, on the same day and year last aforesaid, at, &c. aforesaid, had notice; and was then and there requested by the said plaintiff to pay to him the sum of one hundred and thirty-two pounds so as aforesaid insured; which said sum of one hundred and thirty-two pounds be the said defendant, according to the form and effect of the said writing or, &c. and of his promise and undertaking so made as aforesaid, then and there ought to have paid to the said plaintiff. And whereas also (two hundred pounds money had and received; two hundred pounds money laid out and expended; damages two hundred pounds.)

F. BULLER.

Declaration on a policy of assurance on captain's commitments to arise from the sale of slaves.

LONDON, to wit. William Boys complains of Charles Kensington, being in the custody of the marshal of the marshalsea of our sovereign lord the now king, before the king himself; for that whereas the said William heretofore, to wit, on the twenty-ninth day of August in the year of Our Lord 1704, at London, in the parish of St. Mary le Bow in the ward of Cheap, according to the usage and custom of merchants, caused to be made a certain writing or policy of assurance, purporting thereby, and containing therein (amongst other things), that John Owen Parr (by the name and description of Mr. John Owen Parr agent, be the said John Owen Parr being the agent immediately employed to effect such policy), as well in his own name as for and in the name and names of all and every other person or persons to whom the same did, might, or should appertain in part or in all, did make assurance, &c. (here set out the policy); of which said writing or policy of assurance the said Charles afterwards, to wit, on the same day and year aforesaid, at London aforesaid, in the parish and ward aforesaid, had notice; and thereupon afterwards,

to

to wit, on the same day and year aforesaid, at London aforesaid, in the parish and ward aforesaid, in consideration that the said William, at the special instance and request of the said Charles, had then and there paid, and caused to be paid, to the said Charles, twelve guineas, that is to say, the sum of twelve pounds twelve shillings of lawful money of Great Britain, as a premium and reward for the insurance of one hundred pounds of and upon the captain's commissions in the said writing or policy of assurance mentioned, and had then and there undertaken, and to the said Charles faithfully promised, to perform and fulfil all things in the said writing or policy of assurance contained on the part and behalf of the assured to be performed and fulfilled, he the said Charles undertook, and to the said William then and there faithfully promised, that he the said Charles would become an assurer to the said William in the said sum of one hundred pounds of and upon the captain's commissions in the said writing or policy of assurance mentioned; and that he the said Charles would perform and fulfil all things in the said writing or policy of assurance contained on his part and behalf as such assurer to be performed and fulfilled, according to the form and effect of the said writing or policy of assurance; and the said Charles then and there became an assurer to the said William in the said sum of one hundred pounds in and upon the said commissions in the said writing or policy of assurance mentioned, and then and there subscribed the said writing or policy of assurance as such assurer for the said sum of one hundred pounds accordingly, to wit, at London aforesaid, in the parish and ward aforesaid: and the said William in fact says, that the said ship or vessel, in the said writing or policy of assurance mentioned, at the time of the making of the said writing or policy of assurance, to wit, on the same day and year aforesaid, was in good safety at Liverpool, in the said writing or policy of assurance mentioned, and that a cargo of divers goods and merchandizes were then and there loaded and put on board of the said ship or vessel, to be carried therein on the voyage in the said policy of assurance mentioned; and that he the said William, as captain of the said ship or vessel, was interested in the captain's commissions in the said writing or policy of assurance mentioned, to a large amount, to wit, to the amount of all the money by him ever insured thereon; and that the said insurance so made as aforesaid was made to and for the use and benefit, and on the account of him the said William, to wit, at London aforesaid, in the parish and ward aforesaid: and the said William further says, that the said ship or vessel, with the said cargo on board thereof as aforesaid, afterwards, to wit, on the same day and year aforesaid, did depart and set sail from Liverpool aforesaid, upon her said voyage, to and for the coast of Africa in the said writing or policy of assurance mentioned; and that, after the sailing and departing of the said ship or vessel as aforesaid, and whilst she was sailing and proceeding in the course of her said voyage in the said writing or policy of assurance mentioned, and before her arrival at the coast of

Mutual pre-
mises.

Africa,

Africa, to wit, on the tenth day of September in the year aforesaid the said ship or vessel, with the said cargo, was, by and through the force and violence of the winds and waves, and the mere perils and dangers of the seas, broken, bulged, damaged, wrecked, sunk in the sea and totally lost, whereby the said commissions, in the said writing or policy of assurance mentioned, belonging to the said William as captain of the said ship or vessel, became and were wholly lost to the said William, to wit, at London aforesaid, in the parish and ward aforesaid; of all which said premises the said Charles afterwards, to wit, on the same day and year last aforesaid, there had notice; by reason whereof the said Charles became and was liable to pay, and was then and there requested to pay to the said William the sum of one hundred pounds to by him insured as aforesaid; and which said sum of money the said Charles then and there ought to have paid to the said William, according to the meaning and effect of the said writing or policy of assurance, and of his said promise and undertaking so made in that behalf as aforesaid, to wit, at London aforesaid, in the parish and ward aforesaid. (Counts for money had and received, laid out and expended, lent and advanced): Yet the said Charles, not regarding his said several promises and undertakings so by him made as aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said William in this behalf, hath not yet paid to the said William the said several sums of money, or any or either of them, or any part of them (although often requested so to do); but to pay the said several sums of money, or any or either of them, or any part of them, to the said William, he the said Charles hath hitherto wholly refused, and still doth refuse, to the damage of the said William of one hundred pounds; and therefore he brings suit, &c.

I Am of opinion, that, in this case, the plaintiff has not much chance of recovering. There can be little doubt, that an insurance upon captain's commissions is a good insurable interest: but, in order to recover upon such a policy, it is absolutely necessary to prove that the subject-matter, from which that commission is to arise, was on board the ship

at the time of the loss. It is admitted that the commissions intended to be insured were to arise from the sale of the slaves; and as these slaves were not and could not be on board at the time of the loss, I am of opinion the plaintiff cannot recover; but he will be entitled to a return of premium.

A. PARK.

LONDON, to wit. Raphael Brandon complains against William Halhed, being in the custody of the marshal of the marshalsea of our sovereign lord the king, before the king himself; for that whereas the said Raphael, on the twenty-first day of February in the year of Our Lord 1770, at London aforesaid, in the parish of St. Mary le Bow in the ward of Cheap, according to the usage and custom of merchants, caused to be made a certain policy of insurance, purporting thereby, and containing therein, that the said Raphael, by the name of Mr. Raphael Brandon,

Assumpsit in B. R. on a policy of insurance on goods on board a ship, with a special warranty that the goods were safe till such an hour on such a day. The policy set out.

don, as well in his own name as for and in the name and names of all and every other person or persons to whom the same did, might, or should appertain in part or in all, did make assurance, and caused himself and them and every of them to be insured, lost or not lost, at and from Newcastle to Bayonne in France, upon any kind of goods whatsoever then loaden or to be loaden on board the good ship or vessel called The Speedwell, whereof was master under God for that voyage John Cowley, or whoever else should go for master in the said ship, or by whatsoever other name or names the said ship, or the master thereof, was or should be named or called; beginning the adventure upon the said goods and merchandizes from and immediately following the loading thereof aboard the said ship at Newcastle, and so should continue and endure until the said ship, with the said goods and merchandizes whatsoever, should be arrived at Bayonne aforesaid, and the same be there safely landed; and it should be lawful for the said ship in that voyage to stop and stay at any ports or places whatsoever, without prejudice to that insurance; the said goods and merchandizes by agreement were and should be valued at

l. : touching the adventures and perils which they the said assurers were contented to bear and did take upon them in that voyage, they were of the seas, men of war, fire, enemies, pirates, rovers, thieves, jettizons, letters of mart and countermart, surprizals, takings at sea, arrests, restraints, and detriments of all kings, princes, and people of what nation, condition, or quality soever, barratry of the master and mariners, and of all other perils, losses, and misfortunes that had or should come to the hurt, detriment, or damage of the said goods and merchandizes, or any part thereof; and in case of any loss or misfortune, it should be lawful to the assured, their factors, servants, and assigns, to sue, labour, and travel for, in and about the defence, safeguard, and recovery of the said goods and merchandizes, or any part thereof, without prejudice to that insurance, to the charges whereof they the assurers would contribute each one according to the rate and quantity of his sum therein assured; and it was agreed by them the insurers, that the said writing or policy of insurance should be of as much force and effect as the surest writing or policy of insurance theretofore made in Lombard street, or in the Royal Exchange, or elsewhere in London; and so they the insurers were contented, and did thereby promise and bind themselves, each one for his own, his heirs, executors, and goods, to the assureds, their executors, administrators, and assigns, for the true performance of the premises; confessing themselves paid the consideration due to them for that insurance by the insured, at and after the rate of two pounds per cent; in witness whereof they the said assurers did subscribe their names and sums assured in London. And by the said writing or policy of insurance, corn, fish, salt, fruit, flour and seed were warranted free from average under three pounds per cent, unless general, or the ship were stranded; sugar, tobacco, hemp, flax, hides, and skins, were warranted free from average under

Warranty free
from average,
unless, &c.

Warranty that
goods were safe
till such a day.

Mutual
mistakes. pro-

Averment of in-
terest in the
plaintiff.

Ship wrecked.

Notice to dis-
sent.

under five pounds per cent. and all other goods free from average under three pounds per cent. unless general, or the ship were stranded. *And* it was by the said writing or policy of insurance declared, that the goods insured thereafter were warranted free from all damage till the nineteenth day of February 1770, at twelve o'clock at night on Monday; of which said writing or policy of insurance the said William afterwards, to wit, on the said twenty-first day of February in the said year of Our Lord 1770, at London aforesaid, in the parish and ward aforesaid, had notice. *And* thereupon afterwards, to wit, on the same day and year aforesaid, at the parish and ward aforesaid, in consideration that the said Raphael had then and there paid to the said William the sum of two pounds, as a premium or reward for the insurance of one hundred pounds of and upon the premises in the said writing or policy of insurance, and had then and there undertaken and faithfully promised the said William to perform and fulfil all things in the said writing or policy of insurance contained, on the part and behalf of the assured to be performed and fulfilled as to the said goods and merchandizes, he the said William undertook, and to the said Raphael then and there faithfully promised, that he the said William would become an assurer to the said Raphael for the sum of one hundred pounds of and upon the premises mentioned in the said writing or policy of insurance, and would perform all things in the said writing or policy of insurance contained, on his part and behalf to be performed and fulfilled as such assurer as to the said one hundred pounds; and the said William then and there became and was an assurer to the said Raphael, and then and there subscribed the said writing or policy of insurance as such insurer as to the said one hundred pounds. *And* the said Raphael avers, that the said Raphael at the time of making the said writing or policy of insurance, and continually from thence until and at the time of the loss hereinafter mentioned, was interested in the goods and merchandizes laden on board the said ship to a large value and amount, to wit, to the value and amount of all the money insured thereon, to wit, at London aforesaid, in the parish and ward aforesaid. *And* the said Raphael further says, that the said ship, after the said nineteenth day of February in the said year of Our Lord 1770, to wit, on the twentieth day of February in the year last aforesaid, upon the high seas, by winds, storms, and tempests, became and was wrecked, foundered, sunk, and wholly lost in the said seas, and the said goods and merchandizes of the said Raphael were thereby then and there sunk in the seas and wholly lost, to wit, at London aforesaid, in the parish and ward aforesaid; of which said premises the said William afterwards, to wit, on the first day of March in the said year of Our Lord 1770, at London aforesaid, in the parish and ward aforesaid, had notice; and was then and there required by the said Raphael to pay him the said sum of one hundred pounds, and which he the said William, according to the form

form and effect of the said writing or policy of insurance, and his said promise and undertaking in that behalf made as aforesaid, ought to have paid to him the said Raphael. And whereas the said William afterwards, to wit, on the same day and year last aforesaid, at London aforesaid, in the parish and ward aforesaid, was indebted to the said Raphael in other one hundred pounds of lawful money of Great Britain, for so much money by the said Raphael before that time paid, laid out, and expended to and for the use of the said William, and at his special instance and request; and being so indebted, he the said William, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, at London aforesaid, in the parish and ward aforesaid, undertook, and then and there faithfully promised the said Raphael to pay him the said last mentioned sum of money, when he the said William should be thereunto afterwards requested. And whereas the said William afterwards, to wit, on the same day and year last aforesaid, at London aforesaid, in the parish and ward aforesaid, was indebted to the said Raphael in other one hundred pounds of like lawful money, for so much money by the said William before that time had and received to and for the use of the said Raphael; and being so indebted, he the said William, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, at London aforesaid, in the parish and ward aforesaid, undertook, and to the said Raphael then and there faithfully promised to pay him the said last mentioned sum of money, when he the said William should be thereunto afterwards requested: *nevertheless*, the said William not regarding his said several promises and undertakings so by him in form aforesaid made, but contriving, and fraudulently intending craftily and subtilly to deceive and defraud the said Raphael in this behalf, hath not yet paid him the said several sums of money, or any of them, or any part thereof, (although often requested so to do) but to pay the same he the said William hath hitherto wholly refused, and still doth refuse, to the damage of the said Raphael of one hundred and twenty pounds; and therefore he brings suit, &c. Pledges, &c.

2d Count, Money paid.

3d Count, Money had and received.

Common conclusion.

THO. BARROW,

ON LIVES.

LONDON, *ss.* James Allan, late of, &c. was attached to answer Martha Meredith in a plea, &c. for that whereas the said Martha heretofore, to wit, on, &c. at, &c. for her own use and benefit, had caused to be made a certain writing of assurance, commonly called a policy of assurance, purporting thereby, and containing therein, that in consideration of three guineas per cent. the receipt of which they thereby acknowledged, and according to that rate for every greater or lesser sum received of the said Martha, by the name of M. M. of Chester, they whose names were thereunto subscribed did for themselves severally, and for their several heirs, executors, administrators, and assigns, and not

Declaration, Plaintiff insured with defendant and others the life of one J. G. by which they bound themselves to pay 100l. if the said J. G. died before the expiration of the policy. J. G. died, and defendant refused to pay.

Vcl. I.

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one for the other or others of them, or for the heirs, executors, administrators, and assigns of the other or others of them, assume, promise, and agree, that they respectively, or their respective heirs, administrators, and assigns, should and would well and truly pay, or cause to be paid, without any dispute, abatement, or contention whatever, unto the said Martha, her heirs, executors, administrators, and assigns, by her own indorsement thereon, the full sum and sums of money which they had thereunto respectively subscribed, on the following conditions, that is to say, in case J. G. esquire of Knowle Cottage, near Wimborne in Dorsetshire, warranted in good health, should die or decease out of his natural life by any ways or means whatsoever, (suicide and the hand of justice only excepted,) at any time between the twenty-ninth day of December 1785 and the twenty-ninth day of December 1786, both days included, and during the lifetime of the said Martha; but in case the said Martha should depart this life before the above-named J. G. that policy or obligation to be null and void, otherwise to be and remain in full force until the twenty-ninth day of December 1786, valued at the sum insured, as by the said writing of insurance, reference being thereto had, will fully appear; of which said writing of assurance the said James afterwards, to wit, on the said twenty-ninth day of December 1785, at, &c. had notice: and thereupon afterwards, to wit, on, &c. at, &c. in consideration that the said Martha, at the special instance and request of the said James, had then and there paid to the said James the sum of three guineas of lawful money of Great Britain, as a premium for the assurance of one hundred pounds of and upon the premises mentioned in the said writing of assurance, and had undertaken, and then and there faithfully promised the said James to perform all things contained in the said writing of assurance on her part and behalf to be performed and fulfilled as such assured, he the said James undertook, &c. the said Martha, that he the said James would become an assurer to the said Martha for the said sum of one hundred pounds of and upon the premises mentioned in the said writing of assurance, and that he would perform and fulfil all things contained in the said writing of assurance, to be performed and fulfilled on his part and behalf as such assurer for the said sum of one hundred pounds, and then and there subscribed his name to the said writing of assurance as such assurer for the said one hundred pounds: and the said Martha in fact saith, that the said J. G. mentioned in the said writing of assurance, at the time the risk in the said policy contained commenced, to wit, on, &c. inclusive, was in good health, to wit, at Knowle Cottage, in the said writing of assurance mentioned, that is to say, at, &c.: and the said Martha further saith, that the said J. G. after the said twenty-ninth day of December 1785, and before the thirtieth day of December 1786, and before the day of suing forth the original writ of the said Martha, to wit, on, &c. at, &c. did die and decease out of his natural life, to wit, by a natural death, and not by suicide, or the hand of justice; of all which premises the said James

James afterwards, to wit, on, &c. at, &c. had notice: and the said Martha avers, that she the said Martha, at the time of making the said writing of assurance, and also at the time of her becoming such assured thereby as aforesaid, *was interested in the life* and event so thereby insured against as aforesaid, to a large amount, to wit, to the amount of all the money by her insured thereon, to wit, at, &c.; wherby, and by reason of which said several premises, and according to the tenor of his promise and undertaking aforesaid, he the said James then and there became liable to pay, and ought to have paid to the said M. the said sum of one hundred pounds so by him assured as aforesaid. And whereas, &c. &c. (Money had and received; account stated; common conclusion.)

V. LAWES,

LONDON, to wit. R. C. S. H. and J. M. assignees of the estate and effects of S. D. a bankrupt, according to the form and effect of the statutes made and now in force concerning bankrupts, complain of R. B. esquire, being, &c. for that whereas the said S. D. before he became a bankrupt, to wit, on, &c. caused to be made a certain writing or policy of assurance, purporting thereby, and containing therein, that in consideration of two guineas per cent. and according to that rate for every greater and lesser sum received of the said S. D. they whose names were thereunto subscribed did for themselves severally, and for their several heirs, executors, administrators, and assigns, assure, promise, and agree, that they, their heirs, executors, administrators, and assigns, should and would well and truly pay, and cause to be paid, without any dispute, abatement, or contention whatsoever, unto the said S. D. his heirs, executors, administrators, and assigns, by his or their indorsement thereon, the full sum and sums of money which they had thereunto subscribed, on the following conditions; in case R. C. esquire, of Northumberland-street, Strand, should die or cease this life by any ways or means whatsoever, (suicide or the hand of justice excepted,) before the death or decease of the said S. D. at any time between the fifth of May 1776 and fifth of January 1777; and the said R. C. esquire was thereby warranted in good health the fifth of May 1776, as by the said writing or policy of assurance fully appears; of which said writing or policy of assurance the said defendant afterwards, to wit, on, &c. at, &c. had notice; and thereupon afterwards, to wit, on, &c. at, &c. in consideration that the said S. D. before he became a bankrupt, at the special instance and request of the said defendant, had then and there paid to the said defendant the sum of four guineas, as a premium or reward for the assurance of two hundred pounds of and upon the premises in the said writing or policy of assurance mentioned, and had undertaken and faithfully promised the said defendant all things in the said writing or policy of assurance contained on the part and behalf of the assured to be performed and fulfilled, he the said defendant undertook, and

Declaration at the suit of assignees of a bankrupt, on a policy of assurance on a life, with avowment of interest,

then and there faithfully promised the said S. D. that he the said defendant would become an assurer to the said S. D. for the said sum of two hundred pounds of and upon the premises in the said writing or policy of assurance mentioned, and that he would perform and fulfil all things in the said writing or policy of assurance contained, on his part and behalf to be performed and fulfilled as such assurer as to the said two hundred pounds, and then and there subscribed the said writing or policy of assurance as such assurer for the said sum of two hundred pounds: and the said plaintiffs, as assignees in form aforesaid, further say, that he the said S. D. at the time of the making of the said writing or policy of assurance, and from thence until the time of the event hereinafter mentioned, was interested in the said premises and event, in the said writing or policy of assurance mentioned, to a large amount, to wit, to the value of all the monies by him ever assured thereon; and that the said assurance, so made as aforesaid, was made for the said S. D. in his own name and for his use and benefit, to wit, at, &c.: and the said plaintiffs, as assignees in form aforesaid, further say, that the said R. C. was in good health on, &c. to wit, at, &c.: and the said plaintiffs, as assignees in form aforesaid, further say, that the said R. C. in the said writing or policy of assurance mentioned, after the making of the said writing or policy of assurance, and before the bankruptcy of the said S. D. and before the day of exhibiting the bill of the said plaintiffs, as assignees in form aforesaid, and before the fifth of January 1777, to wit, on, &c. at, &c. departed this life, and then and there died a natural death, and not by suicide or the hands of justice, the said S. D. then and still being living, to wit, at, &c.; of all which said premises the said defendant afterwards, to wit, on, &c. at, &c. had notice, and was then and there requested by the said S. D. before he became a bankrupt, to pay unto him the said two hundred pounds so assured as aforesaid, and which said two hundred pounds the said defendant ought to have paid to the said S. D. before he became a bankrupt, according to the form and effect of the said writing or policy of assurance, and his said promise and undertaking so made as aforesaid. (2d Count like the first, only stating if R. C. should die before S. D. any time before the fifth of January 1777. 3d Count, in consideration of premium, and that S. D. had warranted R. C. in good health on the fifth of May 1776, undertook, &c. in case R. C. should die before S. D. any time between the fifth of May 1776 and fifth of January 1777. 4th Count, of premium, and S. D. had warranted R. C. in good health on the fifth of May 1776, undertook, &c. if R. C. should die before S. D. and before the fifth of January 1777.)

LONDON, to wit. J. G. late of London, merchant, was attached to answer T. L. B. esquire, in a plea of trespass on the case. And thereupon the said T. by A. B. his attorney, complains, that the said J. G. did unlawfully and against the law, in case an officer should die between 25th March 1769 and 25th March 1776 inclusive, and a further premium of three per cent, if war should be declared.

plaints,

plains, for that whereas the said T. on the third day of April 1769, at London aforesaid, to wit, at, &c. had caused to be made a certain writing or policy of assurance, containing therein, that in consideration of twenty-one pounds per cent. and according to that rate for every greater or less sum received by the said T. they whose names were thereunto subscribed did for themselves severally, and their several heirs, executors, administrators, or assigns, and not one for the other or others of them, or for the heirs, &c. of the other of them, engage and promise that they respectively, or their respective heirs, &c. should and would pay, or cause to be paid, to the said T. his executors, &c. the sum and sums of money which they had thereunto respectively subscribed; without any deduction of, or in any respect, cause, matter, or thing whatsoever, in case colonel E. W. should die or cease this life by any ways or means whatsoever, (suicide or the hands of justice excepted;) at any time before the end and determination of seven years, commencing the twenty-fifth of March 1769, and ending the twenty-fifth of March 1776, both days inclusive, provided the said Thomas should be living at the time of such decease, otherwise that assurance should be null and void, as by the said writing or policy of assurance fully appears; and it was then and there agreed, that in case war should be declared, and the said colonel E. W. should go abroad on military duty, that the underwriters should receive afterwards a premium of three per cent. as by the said writing or policy of assurance more fully appears; of which said writing or policy of assurance the said J. G. afterwards, to wit, on the said third of April 1769, at London aforesaid, &c. had notice; and thereupon afterwards, to wit, on the same day and year aforesaid, at L. aforesaid, in consideration that the said Thomas, at the special instance and request of the said Johnson, had then and there paid to the said Johnson the sum of forty-two pounds as a premium and reward for the assurance of two hundred pounds of and upon the premises mentioned in the said writing or policy of assurance, and had undertaken and faithfully promised the said Johnson, to perform and fulfil all things in the said writing or policy of assurance contained, on the part and behalf of the assured to be performed and fulfilled, he the said Johnson undertook, and to the said Thomas then and there faithfully promised, that he the said Johnson would become an assurer to the said Thomas for the said sum of two hundred pounds of and upon the premises mentioned in the said writing or policy of assurance, and that he the said Johnson would perform and fulfil all things in the said writing or policy of assurance contained, on his part and behalf to be performed and fulfilled as such assurer as to the said two hundred pounds, and then and there subscribed the said writing or policy of assurance for the said two hundred pounds: and the said T. further says, that war was not declared, and that the said Edward W. in the said writing or policy of assurance mentioned, did not go abroad on military duty at any time after the making of the said writing or policy of assurance: and the said T. further says, that

ad Count, in consideration that plaintiff had paid 42l. to defendant, and promised to pay 3 per cent. in case war should be declared, &c.

the said E. W. in the said writing or policy of assurance mentioned, after the making of the said writing or policy of assurance, and before the day of suing out the original writ of the said T. to wit, on the first of May 1771, at London aforesaid, in the parish and ward aforesaid, departed this life, and then and there died a natural death, and not by suicide or the hands of justice; of all which said premises the said J. afterwards, to wit, on the same day and year last aforesaid, at, &c. had notice; and was then and there requested by the said T. to pay to him the sum of two hundred pounds so insured by the said J. as aforesaid; and which said sum of two hundred pounds he the said J. then and there ought to have paid to the said T. according to the form and effect of the said writing or policy of assurance, and of his said promise and undertaking so made as aforesaid. *And whereas* also afterwards, to wit, on the said third of April 1769, at London aforesaid, in the parish and ward aforesaid, in consideration that the said plaintiff, at the like special instance and request of the said defendant, had then and there paid to the said defendant another sum of forty-two pounds, and had undertaken and faithfully promised to pay to him the further sum of three pounds per cent. in case war should be declared, and the said Edward should go abroad on military duty, he the said defendant undertook, and then and there faithfully promised the said plaintiff to pay to him another sum of two hundred pounds, in case the said Edward should die or cease this life by any means or ways whatsoever, (suicide or the hands of justice excepted,) at any time before the end and determination of seven years, commencing the twenty-fifth of March 1769, and ending the twenty-fifth of March 1776, both days included, provided the said Thomas should be living at the time of such decease: and the said plaintiff further says, that the said Edward, after the making of the said last-mentioned promise and undertaking of the said defendant, and before the day of suing out the original writ of the said plaintiff, to wit, on, &c. at, &c. died a natural death, not by suicide or the hands of justice; of all which said premises the said defendant afterwards, to wit, on, &c. at, &c. then and there had notice, and was then and there requested by the said plaintiff to pay to him the further sum of two hundred pounds so insured by the said defendant as last aforesaid, and which said last-mentioned sum of two hundred pounds he the said defendant ought to have paid to the said plaintiff, according to the form and effect of his said promise and undertaking so made as aforesaid. *And whereas, &c.* (Money had and received; and breach to the whole.)

AGAINST FIRE.

Declaration at suit of bankrupt's assignees against the subscribers of the Sun Fire-office, for a loss sustained by the bankrupt.

LONDON, *ff.* Samuel Oldham and William Cooper, assignees of the estate, &c. of William Ingram, a bankrupt, against Calverly Bewick, James Haughton Langston, and William God-

frey,

frey, esquires; for that whereas by a certain deed poll, or po-
 nency of assurance, made by the said Calverly, James H. and W. G.
 On, &c. in, &c. (which said deed, sealed with the respective seals
 of the said Calverly, &c. bearing date the same day and year afore-
 said, they the said Samuel and William Cooper now bring into
 court here) reciting that the said William Ingram, by the name
 and addition of William Ingram, of, &c. linen and woollen-draper,
 hosier and haberdasher, having paid the sum of two pounds eleven
 shillings to the Society of the Sun Fire-office, in London, and
 having agreed to pay, or cause to be paid to them, at their said
 office, the sum of one pound seventeen shillings and sixpence, on,
 &c. and the like sum of one pound seventeen shillings and sixpence
 yearly and every year during the continuance of the said policy
 for insurance from loss or damage by fire on his household goods, in
 his then dwelling house only, situate at, &c. brick and tile, not ex-
 ceeding seventy pounds, and on his utensils and stock therein only,
 not exceeding one thousand four hundred and thirty pounds, they
 the said Calverly, &c. did covenant, that from the date of the
 said policy, and so long as the said William Ingram should duly
 pay, or cause to be paid, the said sum of one pound seventeen
 shillings and sixpence, at the times and places aforesaid, and the
 trustees or acting members of the said Society for the time being
 should agree to accept the same, the stock and fund of the said
 Society should be subject and liable to pay to the said William In-
 gram, his executors, administrators, and assigns, all such his da-
 mages and loss which he the said William Ingram should suffer by
 fire, not exceeding the sum of one thousand five hundred pounds,
 according to the exact tenor of their printed Proposals, dated on,
 &c. And the said Samuel and William Cooper further say, that
 the printed Proposals in and by the said deed mentioned and al-
 luded to, are as follows, that is to say, January 6, 1766, Pro-
 posals, &c. &c. (the whole of the printed Proposals were here
 set forth, expressing the amount of the Society's stock, rates of
 insurances, &c. but the only passages applicable to the action are)
 Article sixth, To prevent frauds, &c. &c. Article seventh, No
 loss, &c. &c. Article tenth, Persons insured, &c. &c. as by the
 said deed and Proposals, relation being thereto had, more fully ap-
 pears. And the said Samuel and William Cooper, assignees as
 aforesaid, aver, that the said William Ingram at the time of the
 making of the said policy of assurance, and from thence until the
 loss and damage hereafter-mentioned, was interested in the said
 insured premises to a large amount, to wit, to the amount of all
 the money by him insured, or caused to be insured thereon, to wit,
 at, &c. and that household goods, utensils, and stock to the
 said amount, continued and remained in the said house until after-
 wards, to wit, on, &c. the same were burnt, consumed, and
 destroyed by fire, which did not happen by any invasion, foreign
 enemy, civil commotion, or any military or usurped power what-
 soever; whereby the said William Ingram sustained damage to a
 large amount, to wit, to the amount of the money by him thereon
 assured,

assured, to wit, at, &c. And the said Samuel and William Cooper further say, that the said premises in the said deed or policy mentioned, at the time of the making of the said deed, were not, nor at any time since have been insured in any other office; and that the same premises in the said deed or policy mentioned, were insured at a lower premium than proposed in the table in the said Proposals mentioned. And the said Samuel and William Cooper further say, that the said William Ingram did forthwith after the said loss, to wit, on, &c. at, &c. give notice thereof to the said Society, at their said office, and also as soon as possible afterwards, to wit, on, &c. did there deliver in as particular an account of his said loss and damage as the nature of the case would admit of; and did then and there make proof of the same by his oath and affidavit in writing, according to the form practised in the said office, and by such other proper vouchers as were reasonably required. And the said Samuel and William Cooper further say, that the minister of the parish of, &c. in which the aforesaid dwelling-house of the said William Ingram was situate, long before, and at the time of the loss herein before mentioned, dwelt and resided at a distance from and out of the said parish, and was and still is wholly unacquainted with the character and circumstances of the said W. Ingram, and wholly unable to make such certificate as by the said policy is required; but that the said William Ingram afterwards, to wit, on, &c. at, &c. did procure, and did deliver at the said office, a certificate under the hands of William Thomas Lecoq, &c. &c. then, and at the time of the said loss, being reputable inhabitants of the said parish, who were not concerned in the said loss, importing, that they knew the said W. I. late of, &c. linen-draper, and did believe that he by misfortune, and without fraud, did, on, &c. sustain a considerable loss and damage, by his dwelling-house and the stock and effects thereon, or great part thereof, being consumed by fire; of all which said premises the said Calverly, &c. afterwards, to wit, on, &c. had notice from the said William Ingram. And the said Samuel and William Cooper further say, that the said William, before he became a bankrupt, and the said Samuel and William Cooper, assignees as aforesaid, since the time of the said W. I. became a bankrupt, have always been ready and willing to submit all matters in difference between him and them respectively and the said office touching the said loss to the arbitration of arbitrators, indifferently to be chosen between them. And the said Samuel and William Cooper further say, that although the said W. I. before he became a bankrupt, and the said Samuel and William Cooper, assignees as aforesaid, since the said W. I. became a bankrupt, have respectively in all things conformed himself and themselves to and concerning all and singular the stipulations, matters, or things, which on his or their parts were to be observed and performed to the utmost of their power, according to the form and effect of the said deed or policy of insurance, and of the said Proposals: and although the stock or fund of the said Society

Society always hath been and yet is sufficient to pay the said loss sustained by the said W. I. by reason of the said fire, yet the said W. I. before he became a bankrupt, was not, nor have the said Samuel and William Cooper, assignees as aforesaid, at any time since the said W. I. became a bankrupt, hitherto out of the stock and fund of the said Society, or in any other manner, been repaid or reimbursed the said loss, or any part thereof, but the same and every part thereof is still wholly in arrear and unpaid, contrary to the form and effect of the said Calverly, &c. by them in that behalf made as aforesaid: and so the said Samuel and William Cooper, assignees as aforesaid, say, that the said Calverly, &c. (although often requested) have not kept with the said W. I. before he became a bankrupt, nor with the said Samuel and William Cooper, assignees as aforesaid, since the said W. I. became a bankrupt, the covenant made between the said W. I. before he became a bankrupt, and the said Calverly, &c. in that behalf as aforesaid; but the said Calverly, &c. have broken the same, and still refuse to keep the same with the said Samuel and William Cooper, assignees as aforesaid, to the damage, &c. &c.

First, *Non est factum*. Second, *Actio non*, Because they say, *Plea*. that the said household goods, utensils, stock, and goods in pledge, besides plate, jewels, and wearing apparel, china and glass, in the said declaration mentioned, and by the said plaintiffs above supposed to have been burnt, consumed, and destroyed by fire in the said dwelling-house, were not, nor any part thereof burnt, consumed, or destroyed by fire in the said dwelling-house, in manner and form as the said plaintiffs have in their said declaration above alledged. And of this they put themselves upon the country, &c. Thirdly, *Actio non*, Because they say, that the said dwelling-house at the said time, when, &c. in the said declaration mentioned, was fraudulently set on fire by the said plaintiffs, with intent to defraud them the said defendants. And this they are ready to verify. Wherefore, &c. if, &c. F. BULLER.

This declaration is in covenant, yet I have given it here as if policies of assurance was a distinct head not classed under Assumpsit; but the student will find it under its proper head, COVENANT, in the INDEX.



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GENERAL DIVISIONS OR HEADS, AND LEADING TITLES IN THE CIVIL DIVISION.

ABATEMENT—PLEAS IN.

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executor of M. received the money of the late wife of M. to perform her will ; and traverses, that he was receiver to plaintiff, *Abr.* 105. Plea by defendant in account against receiver after *per legem*, and effoin thereon ; *ne unques receiver*, *Townsend's Judgments*, 17. *Rob. Ent.* 120. *Wi. Ent.* 7.

Count against J. D. receiver of money by the hands of A. R. knight ; defendant pleads, *ne unques receiver* ; and the jury find specially, that R. was indebted to H. in two hundred pounds ; that H. appointed D. to receive it ; R. required D. to borrow for him two hundred pounds of one A. to pay to H. and D. did, and R. became bound to I. for the said two hundred pounds ; after D. appoints his feme to pay to H. the said two hundred pounds so borrowed ; and upon the receipt by the hands of R. the jury doubt, and judgment against D. *Winch. Ent.* 6.

Plea, *ne unques receiver*, and judgment against defendant by *nihil dicit* to account before auditors assigned by the Court ; several issues on this account ; and demurrer to one demand ; and *nil dicit* on that, and confession to four others ; jury find, that defendant had disbursed seventy-eight pounds, that is, eighteen pounds more than plaintiff demands by his account ; and so plaintiff had no cause of action, *Winch. Ent.* 1.

Ne unques receiver to an account rendered, *Cl. Aff.* 79. *Hanf.* 165.

2. *Plene Computavit*, &c. Payment and Delivery of Money received.

By receiver, that he had fully accounted to plaintiff, *Ra. Entr.* 20. *Abr.* 106.

By the late churchwardens, that they had fully accounted with plaintiff as they ought, 1. *Br.* 50.

That defendant was a *common carrier*, and received money to be paid to J. to whom defendant paid it, 3. *Br.* 3.

For several sums of money received at several times : as to money received on the first day, that plaintiff and one M. were partners in merchandize, &c. and that defendant received the money to be paid to M. to whom defendant paid it ; same plea as to the monies received after ; replication, did not pay, 3. *Br.* 4.

That I. by whose hands the money is alledged to have been received, delivered the money to defendant to deliver to testator, to whom defendant delivered it ; replication, that he did not deliver, *Ra. Ent.* 20. Same plea ; replication, that defendant received money to trade with ; and traverse, that I. delivered the money to be delivered to W. *Ra. Ent.* 20. *Vet. Intr.* 26.

As to four pounds received fully accounted with plaintiff ; as to four pounds residue was not receiver, *Ra. Ent.* 20. As to four pieces of cloth was not receiver ; as to four pieces residue fully accounted, *Ib.*

As to part of the money received, *prout*, &c. he was not receiver ; and as to the rest, that plaintiff was indebted to defendant, and desired him to receive money in part satisfaction ; and traverse, that he received it to render an account, *Ra. Ent.* 20.

As to part of the money received, that on such a day fully accounted before auditors ; and traverses, that he was receiver afterwards ; as to the residue of the money received, that he is ready to account ; replication, that defendant, after that day, received all the money mentioned in the declaration, *Ra. Ent.* 19. *Vet. Intr.* 126.

As to all the monies received before that day, *plene computavit* ; as to all received afterwards, never was receiver, *Ra. Ent.* 20. 1. *Br.* 53.

Plea, rendered a full account before auditors ; and demurrer, *Vid.* 78. Plea, after account made paid such a sum, *Hanf.* 105. Plea confesses and avoids, that he rendered a final account, *Ib.* Plea, no such account, *Pl. Gen.* 212.

Plea, that defendant, as late churchwarden, fully accounted with plaintiff, late churchwarden ; and issue, *Br. Red.* 5. *Plene computavit*, *Cl. Aff.* 115. Replication, and issue ; bar by *plene computavit*, *Cl. Aff.* 52. *Rob. Ent.* 152. *Pl. Gen.* 213.

3. Pleas

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3. Pleas before Auditors of Discharge and Allowance, &c.

1. Delivery of Goods.
2. Payment of Money ; and
3. *Ne unques Bailiivus ne Receptor.* } (6):

That defendant delivered to plaintiff the money by the hands ; replication, that he did not deliver, *Ra. Ent.* 15. *Vet. Intr.* 125. That plaintiff paid the money to plaintiff ; replication, did not pay, *Ra. Ent.* 16. 1. *Br.* 49. That defendant paid ten pounds, and allowance made for that sum, *Ib.* Replication, did not pay, 3. *Br.* 2. That defendant delivered to plaintiff goods by way of payment ; replication, did not deliver, *Ra. Ent.* 15. *Vet. Intr.* 25. That defendant paid ten pounds for goods which were delivered as payment ; replication, did not deliver, *Ra. Ent.* 15. That defendant paid twenty pounds *pro duobus lastis* of salmon delivered to plaintiff by way of payment ; *allowance unius lasti* thereof to plaintiff, and as to the other, that he did not deliver, *Ib.* That defendant paid money for the carriage of wool ; allowance thereof to plaintiff, *Ib.* That defendant sold goods received from divers persons residing abroad for divers sums of money, with which he charges himself, and prays a further day to discharge himself therefrom, *Ib.* That defendant paid money for the duties of goods abroad ; and because it appears to the auditors that this matter is insufficient to entitle defendant to allowance, defendant for that part is in arrear, *Ib.* That one L. is indebted to plaintiff in forty pounds for a bill, and for parcels of goods sold ; the same is disallowed, *Ib.* That one L. is indebted to plaintiff for part of the goods sold ; disallowed, *Ra. Ent.* 16. That plaintiff agreed with defendant *de fullatiene pannorum* ; replication, no such agreement ; for plea, defendant did not deliver to plaintiff *pannum fullatum*, *Vet. Int.* 125.

Defendant prays allowance for the annual herbage and pasture of plaintiff's cattle, for board by the month for a year, for clothes and other necessities bought for plaintiff, for the profits of an acre of land occupied by plaintiff for a year, for hay, and money paid for tithes, and in respect of homage ; auditors allow part, and disallow the rest, *Co. Ent.* 47.

Defendant convicted in thirty pounds, twenty pounds, and thirty-three pounds ; plea in bar, payment of twenty pounds to P. and ten pounds to R. by plaintiff's order ; as to forty shillings, parcel of the said twenty pounds, paid to H. by appointment of plaintiff ; as to eighteen pounds, residue thereof, bar, that defendant received them of W. to be paid to plaintiff's use, and that the said plaintiff ordered defendant to pay to S. ; and same of thirty-three pounds ; demurrer as to the whole but forty ; and to that sum replication, that defendant did not pay them to the said H. *Her.* 16.

Plea, did not account before auditors ; and issue on that, *Hanf.* 104. After account paid the sum, *Ib.* 214.

Plea, *ne unques son bailiff*, 2. *Brown's Ent.* 38. Never was bailiff, *Cl. Aff.* 83. Similar, *Pl. Gen.* 212.

Plea, was not bailiff of manors, nor manager of profits, nor receiver of the money, 1. *Brown.* 166. Never was bailiff, *Cl. Aff.* 82.

Plea, *ne unques bailiff* nor receiver ; and judgment on that, *Vidian*, 76. ; and issue, *Pl. Gen.* 112. *Robinsf. Ent.* 115. *Hanf.* 105.

Plea to count by *baron and feme* against bailiff of lands and tenements and receiver of rents and profits thereof, that he was not bailiff, nor had the care of lands and tenements, nor received profits thereof, *Brownl. Rad.* 9. *Ne unques receiver* to account rendered, *Cl. Aff.* 79. *Pl. Gen.* 212. *Robinson's Ent.* 120. Never bailiff to plaintiff, nor had the care, &c. *Robinsf. Ent.* 4. 1. *Brown.* 114.

Plea,

IN THE CIVIL DIVISION.

Plea, that defendant never bailiff to testator, nor care of goods and chattels in the ship never was committed to him to trade for their joint use, &c. nor receiver of said money by the hands of R. and W. to trade and to make a common profit and to render an account, *Robins. Ent.* 5.

Plea, that defendant was bailiff of plaintiff, and received money; and traverses, that he was receiver to render an account; replication, that defendant was receiver *prout*, &c.; and issue, *Brownl. Red.* 2, 3.

Ne unques Bailiff or Receiver, and Plene Computavit.

Plea in bar, that defendant fully accounted with plaintiff for goods, and merchandizes, and money, 1. *Brownl.* 117.

Plea to parcel, *plene computavit*; to residue, *ne unques receiver*, *Robins. Ent.* 122.

Plea to part, *plene computavit*; to residue, *non sum informatus*; replication and issue to *non computavit*, *Brownl. Red.* 6. *Cl. Aff.* 57. *Plene computavit* to part; to residue, *ne unques receiver*, &c. *Sanders*, 105. As to part of the time, never bailiff; as to the residue of time, *plene computavit*, *Read's Dec.* 2, 3.; and issue, *Cl. Aff.* 123, 124.

Plea to count against joint occupier of goods and chattels *uncore prist* to render an account, *Brownl. Red.* 6.

Plea, *plene computavit* for part, confession for the other part, and never was receiver for the residue, *Cl. Aff.* 56. Replication, *non computavit*; and issue; judgment that defendant account, *Ib.* 57. *Pl. Gen.* 214.

Plea, that defendant was plaintiff's receiver at another time than in the count mentioned, and that for that time he accounted before auditors; and traverses the time in the count; replication maintains the count; and issue, *Brownl. Red.* 7.

Plea to count against defendant as receiver of one sum on one day for plaintiff by the hands of J. C. protesting, that he never was receiver; for plea, that defendant was a common carrier, and received money to pay I. to whom defendant paid; and issue, *Brownl. Red.* 8.

Replication, protesting, did not receive; for plea, that defendant did not pay, &c. as in the plea he alledges; rejoinder, that he did pay; and issue, *Cl. Aff.* 55.

Account for goods which should come to defendant's hands; plea, that no goods came to his hands, 1. *Sanders*, 100. Replication, that one silver chalice came.

Plea, that he expended the money in repairs and other necessary charges, 1. *Sanders*, 45.

Plea, received goods to trade, which were feloniously stolen from defendant; replication, they were not stolen; and issue, *Robins. Ent.* 123.

Plea, money received to carry from place to place was stolen, *Ib.* 119.

Plea confesses that he was receiver, but that he rendered a final account in the presence of A. and B. *Robinson's Ent.* 123. *Hanf.* 105.

Plea, that defendant received one hundred pounds to trade, and made a just account in writing, for which plaintiff gained sixty-two pounds *per cent.* which defendant offered to pay with *uncore prist*, *Robins. Ent.* 119.

Account for two sums of money received two several days; as to money received on the first day, that plaintiff and one M. were partners in trade, and that he received the money to pay to said M. to whom defendant paid it; similar plea to the money received the second day; replication, protesting, that plaintiff and M. were not partners; for plea, that defendant did not pay, *Brownl. Red.* 8. Rejoinder, and issue on payment.

Count by merchant against his factor as bailiff of goods to trade for plaintiff; plea, by custom of merchants, adventure with profit and loss; replication traverses the custom; rejoinder, and issue on the traverse, *Brownl. Red.* 9, 10.

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- Plea, protesting for plea as to part, that plaintiff was indebted to defendant in one hundred and twenty pounds, and requested to pay 1. for plaintiff three hundred and fifty-eight pounds; and at the same time plaintiff delivered to defendant part of the goods to sell, and money thereupon retained in part payment of the aforesaid four hundred and seventy-eight pounds; defendant sold the goods for three hundred and eighty-six pounds, which he retained; and as to the residue of the plea, foreign attachment, *Brownl. Red. 11.*
- Plea, as to part of the time, never was bailiff nor receiver; as to residue of the time, *plene computavit*, *Read's Dec. 2.*
- Ne unques receiver* for part; *plene computavit* for residue; replication, *non computavit*; and issue, *Cl. Aff. 124.*
- Plea, that plaintiff discharged auditors from hearing the account; replication, *non*; and issue, *Hanf. 104. Pl. Gen. 213.*
- Plea, infancy in account; replication, of full age, *Brown. V. M. 465.*
- Plea, statute of Limitations; replication, that the account concerns trade, *Vidian, 76.*
- Plea, and prays allowance of payment of money and expences, and allowance of surplus; plaintiff confesses *parat. est computare*; allowance as to the residue; says, that defendant did not pay nor deliver, &c. *prout, &c.*; and issue joined, 2. *Brown. Ent. 40.*
- Plea, as to twenty-three pounds of one hundred pounds, he paid it; as to seventeen pounds thereupon, and as to sixty-three pounds residue, he paid A. by the appointment of plaintiff; replication, that he did not pay; and three several issues, *Brownl. Red. 4.*
- Plea, that he paid money for the carriage *pannorum*; allowance thereon by plaintiff, *Brown's Ent. 10.*
- Judgment, that defendant accopt; auditors assigned by the Court by the assent of plaintiff, who fix a day; defendant bailed, who at the day delivered an account to auditors, and prays allowance thereon, namely, money for clothes, meat, drink, bedding, and other things, requested, expended, and paid for plaintiff; replication, that defendant did not pay; and issue, 1. *Brown. 115.*
- Similar; and auditors report to the Court, that the account is difficult; farther day is given; auditors deliver an account as follows *in hæc verba, &c.*; defendant prays allowance of money paid and expended; replication, as to part, plaintiff allows it; as to residue, did not pay, 2. *Brown, 38.*
- Account made and delivered into court, which follows *in hæc verba, &c.*; defendant admits money received, but pleads a general release; special demurrer, 1. *Brown's Ent. 117.*
- On judgment to account, defendant renders himself, and is committed to the marshal; auditors are assigned, who fix a day; defendant bailed; auditors bring the account into court, *cujus tenor* follows *in hæc verba, &c.*; defendant pleads several payments, which he claims to be allowed; replication, *non solvit* as to all; and separate issues; *venire facias* awarded *de medietate lingue*; verdict for plaintiff, *Robinson's Entries, 116.*
- Confession of the action; auditors assigned; account delivered into court, by which defendant charges himself; monies received for goods sold; and claims to be allowed the same; plaintiff allows part, and disallows the other part; issue thereon; and for the residue defendant pleads, custom of merchants, an adventure on the loss; replication, protesting, &c.; traverses the custom; and issue, *Brownl. Red. 9.*
- Defendant on a judgment to account is taken on a *capias* and committed to the Fleet; auditors assigned, who fix a day; bail for the defendant; account made and set out; defendant is convicted in one hundred pounds; bar, that he paid thirty-seven pounds thereof to plaintiff, and sixty-three pounds residue to A. by plaintiff's order; replication, that he did not pay; and issue; *venire facias* awarded, *Brownl. Red. 3. 4.*

Defendant

IN THE CIVIL DIVISION.

Defendant convicted in one hundred pounds received by the hands of G. one hundred pounds by the hands of T. and twenty pounds by the hands of I. ; bar, that he paid seventy pounds to A. and T. and fifty pounds to P. by plaintiff's order ; like plea for eleven pounds and six pounds ; and to the residue, that plaintiff was indebted to I. in one hundred pounds, and I. was likewise indebted to defendant ; and plaintiff and defendant agreed, that defendant should retain said one hundred pounds, which he retains by plaintiff's order ; replication, that he did not pay said several sums, and as to one hundred pounds, he did not retain by plaintiff's order ; and issue, *Robinson's Entries*, 117.

As to five pounds claimed by defendant for labour about the care and management of goods, auditors are respited until the issue between the parties be tried, *Brownl. Red.* 10.

Plea of *plene computavit* for part ; confession of action for part ; and to residue, *ne unques receiver*, *Cl. Aff.* 56. Judgment, that defendant account, *Id.* 57.

Confession that defendant was plaintiff's bailiff, having the care and disposal of goods to trade in the count named ; judgment to account ; account made before auditors, *Cl. Aff.* 58.

Title of the account of guardian of profits of messuages, 1. *Brown. Ent.* 115.

The like of bailiff for goods received, 2. *Brown. Ent.* 39.

And of receiver for a time of monies received, *Robinson's Ent.* 116.

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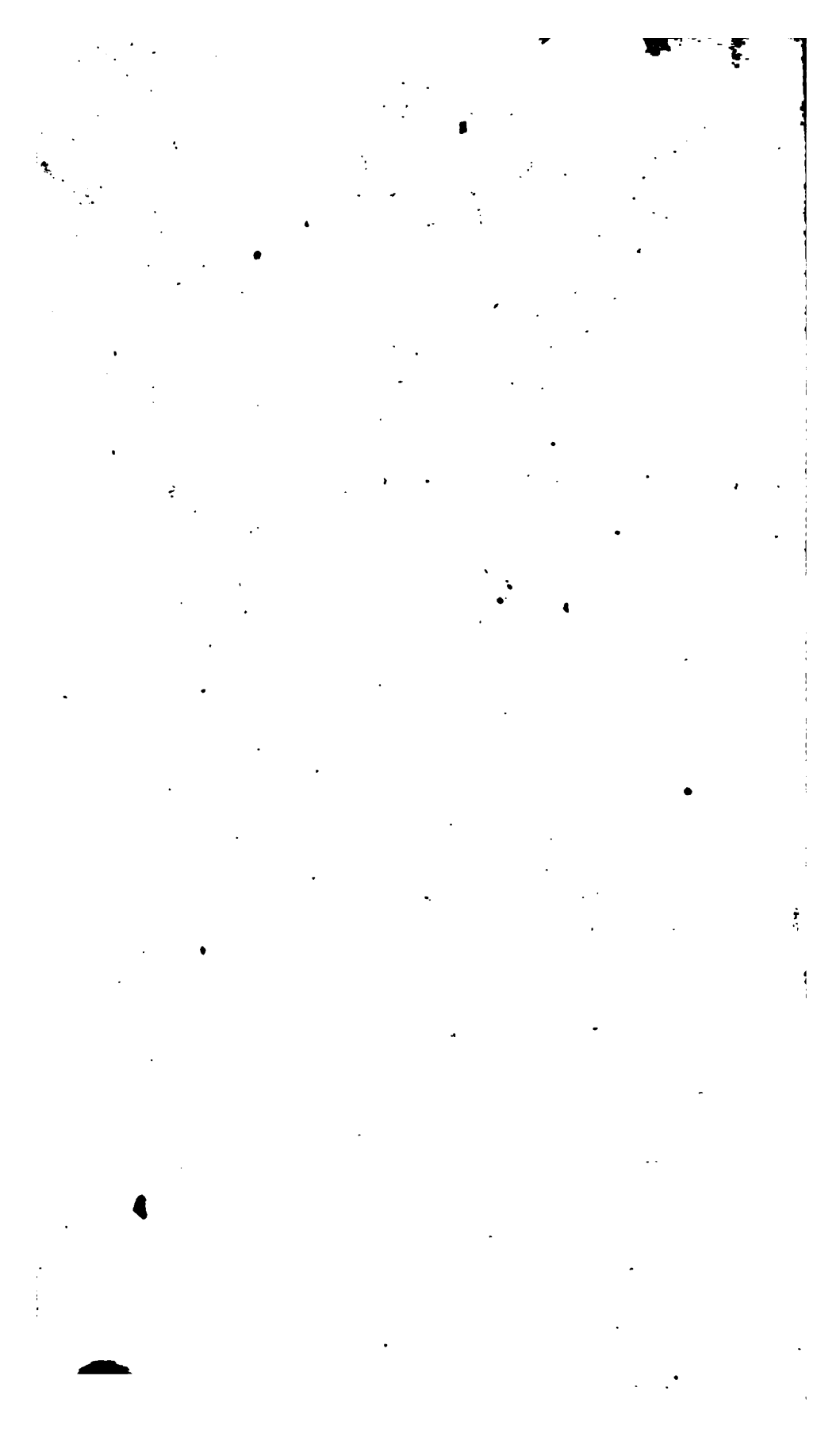
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